

Vol. VII.

Part I

Journal

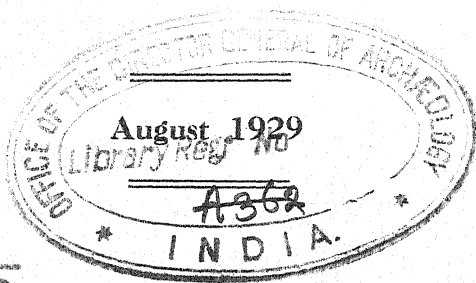
of the

Malayan Branch

of the

Royal Asiatic Society

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SINGAPORE

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1929

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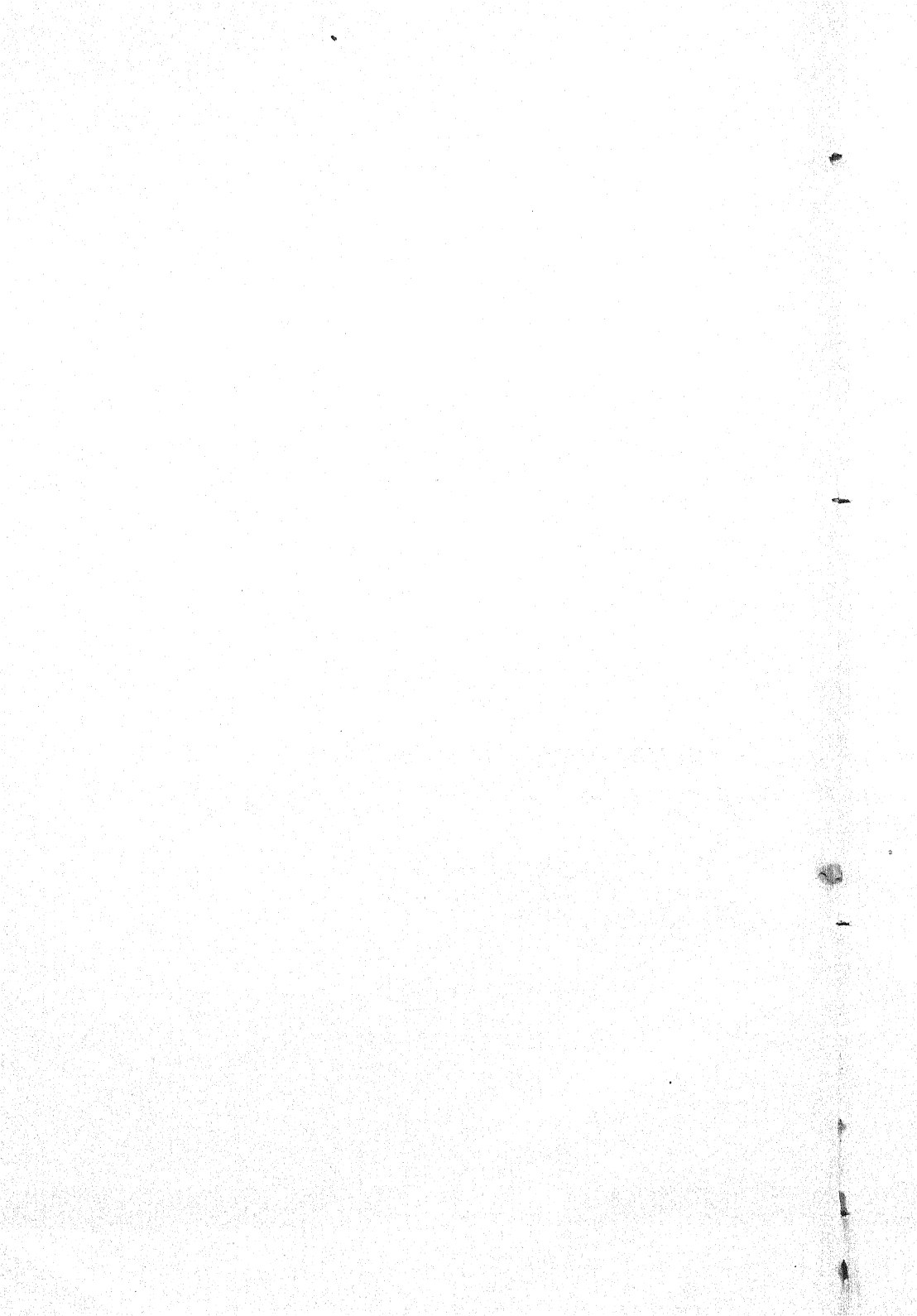
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The  
Malayan Branch  
of the  
Royal Asiatic Society

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**Patron.**

H. E. SIR HUGH CLIFFORD, M.C.S., G.C.M.G., G.B.E., Governor of the  
Straits Settlements, High Commissioner for the Malay States,  
British Agent for Sarawak and North Borneo.

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**Council for 1929.**

THE HON. MR. R. O. WINSTEDT,  
C.M.G., D.LITT.    ..    .. *President.*

MR. C. E. WURTZBURG, M.C.    .. }  
MR. R. E. HOLTUM    ..    .. } *Vice-Presidents for the S.S.*

MR. J. B. SCRIVENOR    .. }  
MR. I. H. N. EVANS    ..    .. } *Vice-Presidents for the F.M.S.*

MR. A. W. HAMILTON    .. *Vice-President for the U.M.S.*

MESSRS. W. G. STIRLING, J. V. }  
MILLS, A. F. RICHARDS, W. }  
MARSH AND THE HON. DR. A. } *Councillors.*  
L. HOOPS    ..    .. }

MR. N. SMEDLEY    ..    .. *Asst. Hon. Secretary.*

MR. M. R. HENDERSON    .. *Hon. Treasurer.*

MR. F. N. CHASEN    ..    .. *Hon. Secretary.*

Proceedings  
of the  
Annual General Meeting.

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The Annual General Meeting of the Society was held at the Raffles Museum, Singapore at 4.30 p.m. on Monday, 18th February, 1929.

The Hon. Dr. R. O. Winstedt, c.m.g., in the chair and among those present were:—

Messrs. C. Boden Kloss, M. R. Henderson, Dr. Hoops, Messrs. R. E. Holttum (Hon. Treasurer), N. Smedley (Asst. Hon. Secretary), F. N. Chasen (Hon. Secretary).

1. The Minutes of the Annual General Meeting held on 20th February, 1928 were read and confirmed.

2. The Annual Report and Accounts as presented by the Council were adopted.

3. The Officers and Council for 1929 were elected (ante p. ).

4. Mr. Boden Kloss proposed and the President seconded that:—

The Society should present to the Royal Batavia Society a bust (in bronze) of Sir Stamford Raffles. The cost to be approximately £50 (fifty pounds).

Mr. Boden Kloss pointed out that Sir Stamford Raffles had promised his bust to the Batavia Society when he left Java but that the promise had never been fulfilled and that it would be an act of grace for the Malayan Branch of the Royal Asiatic Society to make this presentation.

The motion was carried unanimously.

F. N. CHASEN,  
*Hon. Secretary.*

# ANNUAL REPORT.

OF THE

## Malayan Branch, Royal Asiatic Society

FOR 1928.

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### Membership.

At the close of the year the membership roll of the Society included 631 names as against 660 for 31st December, 1927.

There were 17 Honorary Members, 3 Corresponding Members and 611 Ordinary Members.

There were nineteen deaths and resignations and 54 names were withdrawn from the list of members under the provisions of Rule 6 ("and in default of payment within two years shall be deemed to have resigned their membership").

The Council considers that a strict application of this rule is most essential. The journals of the Society cannot be supplied to members whose subscriptions are not up to date and in order that the affairs of the Society may be correctly administered it is necessary that the Membership should not include a number of purely nominal Members.

Forty-four new members were elected during the year as against fifty-six in 1927.

The new members are:—

Barcock, F. G.	Mayne, A. F.
Beckett, Osborne.	McAllister, D.
Beyer, H. O.	Mee, B. S.
Clarke, W. L.	Meyer, L. D.
Colomb, R. E.	Noble, C.
Cooper, B.	Penang Free School, The
Cunningham, F.	Powell, I. B.
Davidson, W. W.	Roche, F. R.
Dawson, W.	Sivam, M. S.
Fenwick, C.	Sivapragasam, T.
Findlay, C. S.	Smith, A. St. Alban.
Foemaker, E. C.	Smith, W. T. H.
Geake, F. H.	Sollis, C. G.
Gillett, E. W.	Smith, A. St. Alban.

Glover, A. H.	St. John-Russel-de-Lys-Gregson,
Gread, R. E.	H.
Haughton, A. de Burgh.	Stantan, W. A.
Heah Joo Seang.	Sterling-Boyd, T.
Hutchinson, W.	Stookes, V. A.
Lewis, T. P. M.	Taylor, E. N.
Loch, C. W.	Thomas, Mrs. C. M.
Malacca Library, The	Vernon, G. H.
Marjoribanks, E. M.	Yeoh Cheang Ann.

### Council.

The President, Sir Hayes Marriott, K.B.E., C.M.G., resigned on 16th December and the Hon. Dr. R. O. Winstedt, C.M.G., D. LITT., (a Vice-President) acted as Chairman for the remainder of the year.

The Council deeply regrets losing such a valuable executive member of the Society as its late President who has left the Colony on retirement.

Sir Hayes Marriott is one of the oldest members of the Society: he was elected a member in 1902, a Councillor in 1907, a Vice-President in 1919 and President in 1928.

### Annual General Meeting.

The Annual General Meeting was held in the Raffles Museum, Singapore on February 20th.

### Journal.

Five Journals were published during the year and this constituted a record for the Society which since its beginning in 1878 has hitherto never issued more than four journals in any one year and that only on two occasions, in 1911 and 1915.

The first journal issued in 1928 was Mr. C. E. Wurtzburg's Index to all the journals of the "Straits Branch" from its foundation until its change of title to "Malayan Branch," i.e. from Nos. 1—86 (1878—1922) and also to "Notes and Queries" Nos. I—IV (1884—1886). This Index which was not published until March, 1928 was, for the sake of convenience in binding, issued as a fourth and extra part for the year 1927. Before the close of the year Mr. Wurtzburg also provided the Society with a manuscript Index to the journals published from 1923 to the end of 1928 (Vol. VI). The other four Journals issued in 1928 constitute Vol. VI of the Society's proceedings and consist of xxxvi and 368 pages, 45 plates, 2 topographical maps, one geological map and nine text figures.

Unfortunately, in order to complete the proposed publishing programme for the twelve months ending 31st December, 1928, it was found necessary to employ two printers and as both firms were working concurrently each Journal produced during the year had to be paged separately, an undesirable feature which it is hoped to avoid in 1929.

The usual varied character of the contributions was well maintained: parts 1 and 2 were chiefly biological and parts 3 and 4 miscellaneous collections of papers dealing with Geology, Archaeology, Etymology and Malayan History. The Council again invites contributions of a rather more popular nature as it is thought that they would appeal to many members of the Society who are perhaps less interested by the more technical papers which form the bulk of the Society's publications.

A fair amount of manuscript still awaits publication and no shortage of suitable material is anticipated in 1929.

### **Royal Batavian Society.**

The "Koninklijk Bataviaasch Genootschap van Kunsten en Wetenschappen" (The Royal Batavian Society of Arts and Letters) celebrated the 150th Anniversary of its foundation in April of the year under review.

Our Society having received an invitation to send a delegate to the celebrations appointed Captain A. C. Baker, M.C. as a representative to convey the greetings of the Malayan Society, to express its hopes that the Royal Batavian Society might long continue to maintain the eminent position in the world of science and letters which its distinguished history had won for it and to avail itself of the opportunity of renewing long established ties of friendship.

At the principal meeting of the celebrations, at which His Excellency the Governor-General of Netherlands India and over thirty delegates representing learned Societies and institutions of Europe and Asia congratulated the Royal Batavian Society on its long and successful career, Captain Baker read a complimentary address from our President, Sir Hayes Marriott, H.B.E., C.M.G.

### **Finances.**

The total of \$6,234.54 spent on printing includes payments for two parts of Volume 5, and also for the General Index to Journals 1—86: Parts 2 and 4 of Volume 6 still remain to be paid for, to complete the expenditure properly chargeable to the year 1928.

The permanent investments of the Society have been increased from \$4,700 to \$5,700 during the year.

F. N. CHASEN,  
*Hon. Secretary.*



# MALAYAN BRANCH, ROYAL ASIATIC SOCIETY.

Receipts and Payments for the year ending 31st December, 1928.

RECEIPTS.			PAYMENTS.	
<b>Cash.</b>			Printing.	
Balance at Mercantile Bank, Jan. 1st 1928	\$11,536.29		Journal, Vol. 5 part 2	\$ 854.00
Petty cash in hand, Jan. 1st 1928	72.24		Vol. 5 part 3	1,576.60
		\$11,608.53	Vol. 5 Index and Title page	38.00
<b>Subscriptions.</b>			Vol. 6 part 1	725.90
For the year 1928	2,286.00		Vol. 6 part 3	591.70
For the years 1926 and 1927	180.00		Index to Journals 1 to 86	780.00
For the years 1929 and 1930	290.00		Illustrations	1,299.59
Life Membership	290.00		Reprints for authors	339.75
		3,046.00	Rules of Society	29.00
Sale of Journals and Maps		500.16		\$ 6,234.54
<b>Government Grants.</b>			Stationery	216.65
Straits Settlements	1,000.00		Postage and other petty expenses	213.12
Federated Malay States	1,000.00		Salaries	405.50
Government of Kedah, for printing	500.00		Furniture	530.00
"Trong Pipit"			Expenses of Delegate to Royal Batavian Society	155.00
Grant for illustrations to paper on Geology of Malacca	63.20	2,563.20	Proof reading, "Trong Pipit"	50.00
			Cheque commission, stamps, and cheque book	20.27
<b>Interest.</b>			\$1,000, S.S. & F.M.S. Victory Loan at 104.50	1,045.00
On Investments	275.00		Balance at Mercantile Bank, Dec. 31st	9,272.01
On current account	206.42	481.42	Petty cash in hand, Dec. 31st	57.22
		\$18,199.31		9,329.23
				\$18,199.31

Examined and found correct,  
 Morris Jamieson,  
 20th January, 1929.

R. E. HOLTUM,  
*Honorary Treasurer.*

# List of Members for 1929

(As on 1st January, 1929.)

## \*LIFE MEMBERS.

### Patron.

1927. Clifford, H. E. Sir Hugh, M.C.S., G.C.M.G., G.B.E.

### Honorary Members.

#### Year of Election.

- 1903, 1923. Abbott, Dr. W.L., North-east Maryland, U.S.A.  
 1890, 1918. Blagden, Dr. C.O., School of Oriental Studies,  
 Finsbury Circus, London, England.  
 1921. Brandstetter, Prof. Dr. R., Luzern, Switzerland.  
 1894, 1906. Collyer, W.R., i.s.o., Hackford Hall, Reepham,  
 Norfolk, England. (Council, 1904; Vice-President,  
 1897-1900, 1902, 1904-5).  
 1903, 1917. Galloway, Sir D.J., Singapore. (Vice-President,  
 1906-7; President, 1908-13).  
 1895, 1920. Hanitsch, Dr. R., 99, Woodstock Road, Oxford,  
 England. (Council, 1897-1919; Hon. Treasurer,  
 1898-1906, 1910-11, 1914-19; Hon. Secretary,  
 1912-13).  
 1922. Johore, H. H. The Sultan of, G.C.M.G., K.B.E., Johore  
 Bahru, Johore.  
 1903, 1927. Maxwell, Sir W.G., K.B.E., C.M.G., 123, Oakwood  
 Court, Kensington, W. 14, England. (Council,  
 1905, 1915; Vice-President, 1911-12, 1916, 1918,  
 1920; President, 1919, 1922-3, 1925-6).  
 1921. Perak, H. H. The Sultan of, K.C.M.G., K.C.V.O., Istana  
 Negara, Bukit Chandan, Kuala Kangsar, Perak.  
 1890, 1912. Ridley, H.N., C.M.G., F.R.S., 7, Cumberland Road,  
 Kew Gardens, Surrey, England. (Council, 1890-4,  
 1896-1911; Hon. Secretary, 1890-3, 1896-1911).  
 1916. Sarawak, H. H. The Rajah of, Kuching, Sarawak.  
 1885. Satow, Sir E.M., Beaumont, Ottery St. Mary, Devon,  
 England.  
 1894, 1921. Shellabear, Rev. Dr. W.G., 20, Whitman Avenue,  
 West Hartford, Conn., U.S.A. (Council. 1896-1901,  
 1904; Vice-President, 1913; President, 1914-18).  
 1921. Snouck-Hurgronje, Prof. Dr. C., Leiden, Holland.  
 1921. Van Ronkel, Dr. P.H., Zoeterwoudsche Singel 44,  
 Leiden, Holland.

**Corresponding Members.**

1920. Laidlaw, Dr. F.F., Eastfield, Uffculme, Devon, England.  
 1920. Merrill, Dr. E.D., University of California, Berkeley, California, U.S.A.

**Ordinary Members.**

1926. Aarsoe, E., Kretay Plantations, Kretay, Trengganu.  
 1921. \*Abdul Aziz, Engku, Johore Bahru, Johore.  
 1926. Abdul Aziz bin Ahmad, District Forest Office, Taiping, Perak.  
 1927. Abdul Ghani bin Mohamed, Medical College, Singapore.  
 1926. Abdul Hamid bin Dato Kaya, District Office, Klang, Selangor.  
 1926. Abdul Hamid bin Hussain, Pasir Mas, Kelantan.  
 1918. Abdul Majid bin Haji Zainuddin, Haji, Political Intelligence Bureau, Singapore.  
 1926. Abdul Malek bin Mohamed Yusuf, Kuala Lipis, Pahang.  
 1926. Abdul Manaf bin Mohamed Hassan, Monopolies and Customs Office, Alor Star, Kedah.  
 1926. Abdul Rahman bin Yassin, 3, Jalan Chat, Johore Bahru, Johore.  
 1923. \*Abdullah bin Ja'afar, Dato, C.B.E., Tarom, Johore Bahru, Johore.  
 1916. Abraham, H.C., Topographical Department, Taiping, Perak.  
 1907. \*Adams, Sir A., K.B.E., Penang. (Vice-President, 1919).  
 1921. Adams, C.D., Simanggang, Sarawak.  
 1917. Adams, R.H., Singapore.  
 1909. \*Adams, T.S., Kuala Kangsar, Perak.  
 1919. \*Adelborg, F., Pelepah Valley Rubber Estates, Kota Tinggi, Johore.  
 1927. Agama, J., Forestry Department, Sandakan, British North Borneo.  
 1927. Ahlston, A.T., Changkat Tin Dredging Ltd., Batu Gajah, Perak.  
 1925. Ahmad, H. H. Tengku, Istana Marble, Johore Bahru, Johore.  
 1926. Ahmad bin Mohamed Isa, District Office, Sungai Patani, Kedah.  
 1926. Ahmad bin Osman, District Office, Raub, Pahang.  
 1926. Ahmad bin Yahya, 363, Serangoon Road, Singapore.  
 1921. Ahmad Jalaluddin, Malay College, Kuala Kangsar, Perak.

- 1926. Ahmad Zainalabidin, Tengku, Kota Bharu, Kelantan.
- 1922. Alexander, C.S., c/o The Crown Agents, 4, Millbank, London, England.
- 1924. Alexander, J.A., 50, National Mutual Buildings, Smith Street, Durban, South Africa.
- 1927. Allen, B.W., Police Office, Kuala Lipis, Pahang.
- 1914. Allen, H.C.W., Boustead & Co., Ltd., Singapore.
- 1921. Allen, Hon. Mr. L.A., Perlis, Kedah.
- 1921. Allen, W.H.R., "Allerton," St. Anthony's Road, Blundellsands, Liverpool, England.
- 1927. Alor Star Government English School Union, Alor Star, Kedah.
- 1926. Ambler, G., Outram Road School, Singapore.
- 1926. Anderson, Capt. H.A., Commissioner of Police, Kota Bharu, Kelantan.
- 1921. Andreini, Capt. E.V., Kuching, Sarawak.
- 1926. Ariff, Dr. K.M., The New Dispensary, 217, Penang, Road, Penang.
- 1926. Atkin-Berry, H.C., Swan and Maclaren, Singapore.
- 1926. Augustine, J.F., Government English School, Alor Star, Kedah.
- 1908. \*Ayre, C.F.C., Ipoh, Perak.
- 1926. \*Bagnall, Hon. Mr. J., Straits Trading Co., Ltd., Singapore.
- 1919. \*Bailey, A.E., Mountmillan, Knowles Hill, Newton Abott, England.
- 1923. Bailey, Hon. Mr. A.S., Kuala Lumpur, Selangor.
- 1926. \*Bailey, John, British Vice-Consulate, Nakawan Lampang, Siam.
- 1915. Bain, Norman K., Kuala Kangsar, Perak.
- 1926. Bain, V.L., Forest Department, Bentong, Pahang.
- 1912. Baker, Capt. A.C., M.C., Adviser's Quarters, Muar, Johore. (Council, 1928).
- 1926. Baker, Lt. J.S.
- 1916. Banks, H.H., Seremban, Negri Sembilan.
- 1899. \*Banks, J.E., The American Bridge Co., Cambridge, Pa., U.S.A.
- 1920. Barbour, Dr. T., Museum of Comparative Zoology, Harvard University, Cambridge, Mass., U.S.A.
- 1928. Barcock, F.G., Meranti Lapan Estate, Lahat, Perak.
- 1926. Barnard, B.H.F., Forest Department, Taiping, Perak.
- 1921. Barnes, J.R., Kuching, Sarawak.
- 1926. Barraclough, F.C., Victoria Institution, Kuala Lumpur.
- 1923. Bathurst, H.C., Labour Department, Penang.
- 1914. Bazell, C., Malay College, Kuala Kangsar, Perak. (Hon. Librarian, 1916-20; Hon. Treasurer, 1921-2).
- 1926. Beach, N.B., Kinta Kellas, Batu Gajah, Perak.
- 1921. Beard, H., The Asiatic Petroleum Co., Ltd., Miri, Sarawak.
- 1923. Becker, F.E., Wessyngton Estate, Rengam, Johore.

- 1928. Beckett, O., Land Office, Malacca.
- 1925. Bee, R.J., c/o F.M.S. Railways, Kelantan.
- 1921. Belgrave, W.N.C., Department of Agriculture, Kua'a Lumpur.
- 1913. Bell, V.G., Ag. Conservator of Forests, Kedah.
- 1910. \*Berkeley, Capt. H., I.S.O., Clink Gate, Drowitwich, England.
- 1927. Best, G.A., Botanic Gardens, Singapore.
- 1912. \*Bicknell, J.W., U. S. Rubber Plantations, Medan, Sumtra.
- 1884. Bicknell, W.A., 2, Phillips Avenue, Exmouth, Devon, England.
- 1922. Bigs, L.A.C., c/o Bank of New Zealand, Napier, Hawkes Bay, New Zealand.
- 1924. Bird, R., c/o The Crown Agents, 4, Millbank, London.
- 1926. Birkinshaw, F., Agricultural Department, Taiping, Perak.
- 1926. Birtwistle, W., Fisheries Department, Singapore.
- 1908. \*Bishop, Major C.F., R.A.
- 1922. Bishop, D.A., Raffles Institution, Singapore.
- 1923. Black, J.G., Asst. Adviser's Office, Trengganu.
- 1921. Black, Major K., M.C., General Hospital, Singapore.
- 1926. Blackburn, H.K., Malim Nawar South Ltd., Malim Nawar, Perak.
- 1923. \*Blacker, Dr. G.O., "Sentosa," Brooklands Road Sale, Manchester, England.
- 1926. Blair, R.W., Institute for Medical Research, Kuala Lumpur.
- 1884. Bland, R.N., 25, Earl's Court Square, London, S.W.5. (Council, 1898-1900; Vice-President, 1907-9).
- 1921. Blasdell, Rev. R., Anglo Chinese School, Ipoh, Perak.
- 1926. Bloomfield, C.W., Education Department, Alor Star, Kedah.
- 1925. Blythe, W.L., Chinese Protectorate, Kuala Lumpur, Selangor.
- 1926. \*Boswell, A.B.S., Forest Department, Taiping, Perak.
- 1910. Boulton, F.F., Limbang, Sarawak.
- 1919. \*Bourne, F.G., Coroner's Office, Singapore.
- 1926. Bower, W.M.L., Fort Road, Malacca.
- 1921. Boyd, R., Co-operative Societies Department, Penang.
- 1927. Boyd, T.R., Hongkong Bank, Kuala Lumpur, Selangor.
- 1928. Boyd, Mr. Justice T. Stirling, Kuching, Sarawak.
- 1919. \*Boyd, W.R., c/o The Crown Agents, 4, Millbank, London.
- 1913. Braddell, R. St.J., Braddell Brothers, Singapore.
- 1926. Bretherton, E.H.S., Education Office, Taiping, Perak.
- 1926. Bridges, Dr. D., Alor Star, Kedah.
- 1897. Brockman, Sir E.L., K.C.M.G., c/o F.M.S. Agency, Cockspur Street, London, England.
- 1926. Brooks, A.C., Government Analyst's Office, Singapore.

1909. Brooks, C.J., Church Gate House, Woolpit, Suffolk, England.
1915. Brown, C.C., Taiping, Perak. (Vice-President, 1925).
1910. Brown, D.A.M., Glugor, Penang.
1921. Browne, T.W., St. Hilier Estate, Bahau, Negri Sembilan.
1913. \*Bryan, J.M., Borneo Co., Ltd., 28, Fenchurch Street, London.
1887. Bryant, A.T., The Moorings, Falmouth, Cornwall, England. (Council, 1907-10; Vice-President, 1912, 1914-16).
1926. Buckle, Miss D.M., Raffles' Girls School, Singapore.
1912. Burkill, I.H., "Clova," The Mount, Fetcham Park, Leatherhead, England. (Council, 1913, 1921-3; Hon. Secretary, 1914-17; Vice-President, 1924).
1926. \*Burton, W., Kuala Lumpur.
1921. Butterfield, H.M., Alor Star, Kedah.
1913. \*Caldecott, A., Post Office, Kuala Lumpur, Selangor.
1925. Callenfels, Dr. P. van Stein, Madiun, Ponorogo, Java.
1916. Campbell, Prof. J.A., National Institute for Medical Research, Hampstead, London, England. (Council, 1917, 1919).
1923. Campbell, J.W., Malacca.
1926. Cardon, Rev. Fr. R., Taiping, Perak.
1926. Cardwell, H.F., Tangkah Estate, Tangkah, Johore.
1925. Carey, H.R., Malay College, Kuala Kangsar, Perak.
1924. Carr, C.E., Tembeling, Pahang.
1927. Carroll, A.F., Forest Office, Kuala Lipis, Pahang.
1926. Carver, Hon. Mr. G.S., Donaldson and Burkinshaw, Singapore.
1921. \*Cavendish, A., Kuala Lumpur, Selangor.
1926. Chan Sze Onn, 64, Market Street, Singapore.
1906. Chapman, W.T., c/o The Crown Agents, 4, Millbank, London.
1926. Charter, J.R.N., Johore Bahru, Johore.
1921. Chasen, F.N., Raffles Museum, Singapore, (Council, 1925; Hon. Secretary, 1927—).
1924. \*Cheeseman, H.R., Education Department, Johore Bahru, Johore.
1926. Chelliah, D.D., Anglo Chinese School, Penang.
1913. \*Choo Kia Peng, Kuala Lumpur, Selangor.
1913. Chulan, Hon. Raja di Hilir, c.m.g., Kuala Kangsar, Perak.
1927. Clark, B.F., c/o Adamson Gilfillan and Co., Ltd., Pontianak, W. Borneo.
1921. Clark, H.T., Education Office, Singapore.
1926. \*Clarke, G.C., "Tilton," 14, Gallop Road, Singapore.
1929. Clarke, W.L., Kuching, Sarawak.
1923. Clarkson, H.T., Raffles Hotel, Singapore.
1921. Clayton, G.E., Alor Star, Kedah.

- 1926. Clayton, Hon. Mr. R.J.B., The Residency, Kota Bharu, Kelantan.
- 1911. \*Clayton, T.W., Alor Star, Kedah.
- 1925. Clegg, R.P., Kampar, Perak.
- 1917. Clifford, G.F.W., Lawas (Sarawak) Rubber Estates, Ltd., Lawas, Labuan.
- 1922. Cochrane, The Hon. Mr. C.W.H., The Residency, Taiping, Perak.
- 1922. Coe, Capt. T.P., c/o The Crown Agents, 4, Millbank, London.
- 1926. Coleman, C.G., High School, Malacca.
- 1920. \*Collenette, C.L., Gothic Lodge, Woodford Green Essex, England. (Council, 1922).
- 1926. Collins, G.E.P., c/o Mansfield & Co., Ltd., Penang.
- 1928. Colomb, R.E., Forest Department, Telok Anson, Perak.
- 1926. Commandant, The, Police Depot, Kuala Lumpur, Selangor.
- 1926. Conservator of Forests, F.M.S. & S.S., Kuala Lumpur.
- 1926. Coope, A.E., Federal Secretariat, Kuala Lumpur, Selangor.
- 1928. Cooper, B., Survey Department, Malacca.
- 1927. Cooper, C.B., Jalan Ah Fook, Johore Bahru, Johore.
- 1926. Cooper, R.H., The Eastern Smelting Co., Kuala Lumpur.
- 1925. Corry, W.C.S., Asst. Collector Land Revenue, Kuala Lumpur.
- 1926. Cosgrave, Dr. A.K., Kuala Lumpur, Selangor.
- 1921. Coulson, N., Kota Bharu, Kelantan.
- 1921. Cowap, J.C., Government Analyst's Office, Singapore.
- 1923. \*Cowgill, J.V., Land Office, Kuala Lumpur, Selangor.
- 1921. Cranna, Gordon, Young Men's Christian Association, Singapore.
- 1921. Crocker, H.B., Kuching, Sarawak.
- 1922. Cross, A.B., c/o Cross and Wright, Seremban, Negri Sembilan.
- 1917. Cubitt, G.E.S., Kuala Lumpur, Selangor.
- 1921. \*Cullen, W.G., c/o Price Waterhouse & Co., Aguiar 71, Havana, Cuba.
- 1925. Cullin, E.G., Public Works Department, Dindings.
- 1927. Cumming, C.E., Floral Villa, Ipoh, Perak.
- 1928. Cunningham, F., Port Dickson, Negri Sembilan.
- 1923. Curtis, R.J.F., District Office, Dindings.
- 1926. Dakers, C.H., Singapore.
- 1922. Dalton, H.G., Subur Rubber Estates, Ulu Sepatang P.O., Perak.
- 1923. Dalton, N.D., c/o General Post Office, Medan, Sumatra.
- 1910. \*Daly, M.D., Kuala Lumpur, Selangor.
- 1924. Dato Muda Orang Kaya Kaya, Panglima Kinta, Jalan Istana, Ipoh, Perak.

1918. \*David, P.A.F., c/o The Crown Agents, 4, Millbank, London.  
1926. Davidson, J., c/o Caldbeck, Macgregor & Co., Kuala Lumpur.  
1928. Davidson, W.W., c/o Public Works Department, Trengganu.  
1925. Davies, D.J., Sungei Purun Estate, Semenyih, Selangor.  
1927. Davies, E.R., Malay College, Kuala Kangsar, Perak.  
1926. Davies, G.C., Victoria Institution, Kuala Lumpur, Selangor.  
1927. Dawson, C.W., District Office, Alor Star, Kedah.  
1928. Dawson, W., Merewether Road, Lumut, Dindings.  
1923. Day, E.V.G., Asst. Adviser's Office, Besut, Trengganu.  
1926. Del Tufo, M.V., Labour Office, Penang.  
1922. Denny, A., Sungai Pelek Estate, Sepang, Selangor.  
1903. \*Deshon, H.F.,  
1897. Dickson, E.A., Batu Gajah, Perak.  
1921. \*Dickson, Rev. P.L., The Grammar School, St. Ives, Hunts, England.  
1927. Director of Publications\*, Princes Street, Westminster, London, S.W.1, England.  
1927. Dodd, G.C., District Judge, Malacca.  
1920. Dodds, Dr. H.B., General Hospital, Penang.  
1926. \*Dolman, H.C., Forest Office, Kuala Kangsar, Perak.  
1923. \*Doscas, A. E. Coleman, Department of Agriculture, Kuala Lumpur, Selangor.  
1922. Drury, Capt. F., Bukit Zahara School, Johore Bahru, Johore.  
1921. Dryburgh, A.M., Colonial Secretariat, Singapore.  
1926. Duff, Dr. R.W., Taiping, Perak.  
1910. Dunman, W., Grove Estate, Grove Road, Singapore.  
1926. Dunn, Dr. E.R., Haverford College, Haverford, Penn., U.S.A.  
1915. \*Dussek, O.T., Sultan Idris Training College, Tanjong Malim, Perak.  
1922. Ebdon, W.S., Segamat, Johore.  
1922. Eckhardt, Hon. Mr. H.C., Alor Star, Kedah.  
1922. Edgar, A.T., Suffolk Estate, Sitiawan, Perak.  
1927. Education Department, Alor Star, Kedah.  
1926. Edwards, Major W.A.D., Baling, Kedah.  
1885. Egerton, Sir Walter, Fair Meadow, Mayfield, Sussex, England.  
1921. Elder, Dr. E.A., The British Dispensary, Singapore.  
1926. Eley, H.J., Colonial Secretariat, Singapore.  
1922. Elles, Hon. Mr. B.W., The Residency, Alor Star, Kedah.  
1918. Elliott, F.M., Treskelly, Maruhull, Dorset, England.  
1924. Elster, C., Kuala Han, Estate, Kelantan.



1926. Ensor, T.D., c/o Messrs. Neill and Bell, 1, Old Market Square, Kuala Lumpur, Selangor.
1913. Ermen, C., c/o W. Ermen, "The Gables," Alderley Edge, Cheshire, England.
1923. \*Eu Tong Seng, O.B.E., Sophia Road, Singapore.
1924. Evans, I.H.N., The Museum, Taiping, Perak. (Vice-President, 1926-7).
1925. Fairburn, Hon. Mr. H., Stevens Road, Singapore.
1927. Farrelly, G.A., Sandakan, British North Borneo.
1909. Farrer, R.J., Municipal Offices, Singapore, (Council, 1925-7).
1929. Fenwick, C., c/o The Borneo Co., Kuching, Sarawak. (Council, 1912-13).
1911. \*Ferguson-Davie, Rt. Rev. C.J.,
1909. Ferrier, J.C., 28, Fenchurch Street, London, England.
1928. Finlay, C.S., District Office, Jasin, Malacca.
1917. Finlayson, Dr. G.A., "Changi," West Moors, Dorset, England.
1919. \*Finnie, W., Kininmouth Mains, Mintlaw Station, Aberdeen, Scotland.
1910. Firmstone, H.W., Sentosa, Ripple, W. Dover, Kent, England. (Council, 1918-19; Vice-President, 1920).
1925. Fitzgerland, Dr. R.D., c/o Glyn Mills & Co., 3, Whitehall Place, London, S.W.1, England.
1924. Fleming, E.D., Chinese Protectorate, Taiping, Perak.
1926. Flippance, F., Botanic Gardens, Penang.
1897. \*Flower, Major S.S., Spencersgreen, Tring, Herts, England.
1926. Flowerdew, A.H., Federated Buildings, High Street, Kuala Lumpur, Selangor.
1928. Foenander, E.C., District Forest Office, Temerloh, Pahang.
1926. Forbes, G.D., Kinta Kellas Estate, Batu Gajah, Perak.
1926. Ford, P.B., 60, Klyne Street, Kuala Lumpur, Selangor.
1923. Forest Botanist, The, Forest Research Institute, Dehra Dun, U.P. India.
1921. Forrer, H.A., District Court, Singapore.
1918. \*Foxworthy, Dr. F.W., Forest Department, Kuala Lumpur, Selangor. (Council, 1923, 1926-7).
1921. \*Fraser, F.W., The Badminton Club, 100 Piccadilly, London, W.1.
1908. \*Freeman, D., 16, St. Catherine's Road, Southbourne, Bournemouth, Hants, England.
1926. Froda, A.H., Ipoh Club, Ipoh, Perak.
1910. \*Frost, Hon. Mr. Meadows, Resident Councillor, Malacca.
1922. Fuller, J.C., c/o General Post Office, Malacca.
1912. \*Gallagher, W.J., U. S. Plantations Inc., Medan, Sumatra.

1924. Gammans, L.D., East Court, East Cosham, Hants, England.
1917. \*Garnier, Rev. Keppel, Penang.
1923. Gater, B.A.R., Institute for Medical Research, Kuala Lumpur.
1926. Gatfield, W.H., Chinese Protectorate, Singapore.
1928. Geake, F.H., c/o Government Analyst, Singapore.
1920. Geale, Dr. W.J., Kuala Krai, Kelantan.
1926. \*George, J.R., The Chartered Bank, Singapore.
1917. \*Gerini, Lt.-Col. G.C.,
1927. German, R.L., Federal Secretariat, Kuala Lumpur, Selangor.
1928. Gillett, Prof. E.W., Raffles College, Cluny Road, Singapore.
1923. Gilmour, A., The Residency, Labuan.
1902. \*Gimlette, Dr. J.D., Hillside, Upper Weston, Bath Somerset, England.
1922. \*Glass, Dr. G.S., Municipal Offices, Penang.
1928. Glover, A.H., Municipal Offices, Malacca.
1918. Gloyne, G.B., c/o Burt Myrtle & Co., Batavia, Java.
1916. Goodman, Hon. Mr. A.M., Chinese Protectorate, Singapore.
1922. Gordon, T.I.M., General Post Office, Singapore.
1920. Gordon-Hall, Capt. W.A., c/o The Crown Agents, 4, Millbank, London.
1926. Goss, P.H., Survey Department, Malacca.
1909. Goulding, R.R., Survey Department, Johore Bahru, Johore.
1926. Graeme, A.W.S., Sentul, Selangor.
1927. Graham, H. Gordon, Sungei Kruit Estate, Sungkai, Perak.
1924. Graham, W.H., Malacca.
1928. Gread, R.E., Sitiawan, Lower Perak.
1923. Green, Dr. P. Witners, Johore Bahru, Johore.
1926. Greene, Dr. R.T.B., Institute for Medical Research, Kuala Lumpur.
1928. Gregson, Capt. H. St. John-Russel-de Lys, Chartered Bank, Singapore.
1924. Greig, G.E., Kuala Lumpur, Selangor.
1926. Grice, N., Chinese Protectorate, Johore Bahru, Johore.
1923. Grieve, C.J.K., Post Box No. 58, Klang, Selangor.
1921. Griffiths, C.S., Kuching, Sarawak.
1911. Grist, D.H., Department of Agriculture, Kuala Lumpur.
1922. Gubbins, W.H.W., c/o Mansergh and Taylor, Seremban, Negri Sembilan.
1926. Gummer, W.A., Survey Office, Malacca.
1925. Gunn, R.F., Education Department, Penang.
1916. Gupta, Shiva Prasad, Naudansahu Street, Benares City, India.

1923. \*Hacker, Dr. H.P., Zoological Department, University College, London, W.C.1, England.
1923. Haines, Major O.B., s.o.s., Estate, Selama, Perak.
1923. Halford, Sidney, F.M.S. Railways Construction Department, Kuala Lumpur, Selangor.
1927. Hall, A.S., c/o Gammon and Hall, Ltd., Taiping, Perak.
1914. Hall, J.D., "Hillcote," College Road, Dulwich, London, S.E. 21, England. (Council, 1924, 1926-8).
1911. \*Hallifax, F.J., Oakwood, Brampton, Cumberland, England.
1915. Hamilton, A.W., Police Office, Ipoh, Perak. (Vice-President, 1922, 1925).
1918. Hampshire, Hon. Mr. A.K.E., Kuala Lumpur, Selangor.
1922. Hampshire, Hon. Mr. D.H., c/o Boustead & Co., Ltd., Kuala Lumpur, Selangor.
1924. Hamzah bin Abdullah, Land Office, Kuala Lumpur, Selangor.
1923. Hancock, A.T., 22-2, Tanglin Road, Singapore.
1922. Hanitsch, P.H.V., c/o P.W.D., Alor Star, Kedah.
1909. Harrington, A.G., Municipal Offices, Singapore.
1922. Harrower, Prof. G., Medical College, Singapore.
1921. Hashim, Capt. N.M., Parit Buntar, Perak.
1926. \*Hastings, W.G.W., 56, Klyne Street, Kuala Lumpur, Selangor.
1928. Houghton, A. de Burgh, Kuala Reman Rubber Estates Ltd., Kuantan, Pahang.
1926. Hawkes, Capt. W.B., Batu Gajah, Perak.
1921. Hawkins, G., The Secretariat, Kuala Lipis, Pahang.
1925. Hay, A.W., Chinese Protectorate, Singapore.
1919. Hay, M.C., Kemaman, Trengganu.
1921. Hayes, L.J., Fraser & Co., Singapore.
1904. \*Haynes, A.S., Federal Secretariat, Kuala Lumpur, Selangor. (Council, 1920).
1928. Heah Joo Seang, c/o Hin Giap Co., 195, Victoria Street, Penang.
1922. Hellings, G.S., c/o The Crown Agents, 4, Millbank, London.
1926. Helps, A., Kuala Kubu, Selangor.
1923. Hemmant, G., c.m.g., Colonial Secretariat, Singapore.
1926. Henderson, Capt. A.M., Sandala Estate, Sandakan, British North Borneo.
1925. Henderson, L., Sultan Idris Training School, Tanjong Malim, Perak.
1921. Henderson, M.R., Botanic Gardens, Singapore, (Council, 1928).
1923. Henggeler, A.A., Kuala Lumpur, Selangor.
1917. Hereford, G.A., c/o The Crown Agents, 4, Millbank, London.

1927. Herod, E.J., c/o The British Borneo Timber Co., Sandakan, British North Borneo.
1926. Heron, F.R., Singapore Cold Storage Co., Singapore.
1921. Hewetson, C., c/o Lyaal and Evatt, Singapore.
1923. \*Hicks, E.C., Education Department, Alor Star, Kedah.
1878. Hill, E.C., 26, Highfield Hill, Upper Norwood, London.
1922. Hill, W.C., Singapore Oil Mills Ltd., Havelock Road, Singapore.
1922. Hinde, C.T., Mersing, Johore.
1923. \*Hodgson, D.H., Forest Department, Kuala Lumpur, Selangor.
1921. Holgate, M.R., c/o Education Department, Malacca.
1926. Holl, E.S., Kuching, Sarawak.
1923. Holland, A.D., Kapoewas Rubber Co., Ltd., Sungei Dekan, Pontianak, Borneo.
1922. Holtum, R.E., Botanic Gardens, Singapore. (Hon. Treasurer, 1923-6, 1928).
1921. Hoops, Hon. Dr. A.L., Singapore.
1917. \*Hose, Dr. Charles, Redleaf, Riddledown Road, Purley, Surrey, England.
1897. Hose, E.S., C.M.G., The Manor House, Normandy, Guildford, England. (Vice-President, 1923, 1925; President, 1924).
1926. Howell, Mrs. E.F., "Sunnyside," Oxley Road, Singapore.
1926. Howitt, C.R., Jasin, Malacca.
1926. Howl, Capt. F.W., Ipoh, Perak.
1891. Hoynck, van Papendrecht, P.C., 38, Avenue Hoche, Paris VIII, France.
1909. Hubback, T.R., Sunlaws, Bukit Betong, Kuala Lipis, Pahang.
1922. Huggins, Capt. J., Federal Secretariat, Kuala Lumpur.
1909. Hughes, J.W.W., District Office, Klang, Selangor.
1926. Hughes, R.W., Boustead & Co., Ltd., Singapore.
1907. Humphreys, H.E. Mr. J.L., C.M.G., C.B.E., Government House, Sandakan, British North Borneo. (Vice-President, 1922-5).
1922. Hunt, Capt. H. North, Bradgate, 102, Christchurch Street, Ipswich, England.
1921. Hunter, Dr. P.S., Municipal Offices, Singapore.
1926. Hussain bin Mohamed Taib, District Office, Temerloh, Pahang.
1929. Hutchinson, Dr. W., Kuching, Sarawak.
1925. Hyde, A., c/o Colonial Secretariat, Singapore.
1926. \*Ince, H.M., Langkon, British North Borneo.
1922. Irvine, Capt. R., Colonial Secretariat, Singapore.
1921. Ismail bin Bachok, Dato, Johore Bahru, Johore.
1926. Ismail bin Haji Puteh, Monopolies and Customs, Kulim, South Kedah.
1921. \*Ivery, F.E., Alor Star, Kedah.

- 1926. Jackson, A., Mansfield & Co., Ltd., Singapore.
- 1925. Jacques, E.V.H., c/o Mrs. Warren, 5, Wamborough Road, Oxford, England.
- 1922. Jago, E., District Office, Tanjong Malim, Perak.
- 1918. \*James, D., Goebilt, Sarawak.
- 1927. Jamieson, M., c/o Government Analyst, Singapore.
- 1907. Janion, E.M., 5, Gracechurch Street, London, E.C.3, England.
- 1918. Jansen, P.J., 6, Wilhelminalaan, Park de Kieviet, Wassenaar, Holland.
- 1926. Jefferson, J.P., Miri, Sarawak.
- 1926. Jefferson, J.W., Education Office, Clark Street, Kua'a Lumpur, Selangor.
- 1921. \*Jermyn, L.A.S., Government English School, Batu Pahat, Johore.
- 1926. Jervoise, R.S., Krian, Perak.
- 1910. Johnson, B.G.H., Crossways, Littlehampton, Sussex, England.
- 1925. Jones, A.E. Thornley, Mansfield & Co., Ltd., Singapore.
- 1918. \*Jones, E.P.,
- 1913. Jones, S.W., Johore Bahru, Johore.
- 1919. \*Jordan, A.B., Sanitary Board, Ipoh, Perak.
- 1926. Kahar bin Yamtuan Antah, Tengku, Kuala Pilah, Negri Sembilan.
- 1926. Kassim bin Che Ismail, State Council Office, Alor Star, Kedah.
- 1921. Kassim bin Sultan Abdul Hamid Halimsah, Tengku, Alor Star, Kedah.
- 1921. \*Kay-Mouat, Dr. J.R., Medical College, Singapore.
- 1927. Keble, W.T., Sandakan, British North Borneo.
- 1926. Keet, Mrs. H.G., c/o The Inspector of Schools, Singapore.
- 1926. Keir, A., Education Office, Taiping, Perak.
- 1926. Keith, H.G., Forest Department, Sandakan, British North Borneo.
- 1921. \*Kellie, J., Dunbar Estate, Neram Tunggal, P.O. Chegar Perah, Pahang.
- 1913. Kempe, J.E., District Office, Taiping, Perak.
- 1920. \*Ker, W.P.W., Paterson, Simons & Co., Ltd., Singapore.
- 1920. \*Kerr, Dr. A., Wireless Road, Bangkok, Siam.
- 1926. Khoo Keng Hooi, Chow Kit & Co., Ltd., Kuala Lumpur, Selangor.
- 1926. Khoo Sian Ewe, 24, Light Street, Penang.
- 1921. Kidd, G.M., District Office, Tampin, F.M.S.
- 1920. King, E.M., Kong Lee (Perak) Plants, Ltd., Bagan Serai, Perak.
- 1927. King, S.E., The Chinese Protectorate, Ipoh, Perak.
- 1926. Kingsbury, Dr. A. N., Institute for Medical Research Kuala Lumpur, Selangor.

1926. Kinneir, Dr. D., Rim Estate, Jasin, Malacca.  
1916. Kinsey, W.E., Forest House, Seremban, Negri Sembilan.  
1921. Kitching, T., Superintendent of Surveys, Trengganu.  
1900. Kloss, C. Boden, Raffles Museum, Singapore.  
(Council, 1904-8, 1923, 1927-8; Vice-President, 1920-1, 1927; Hon. Secretary, 1923-6).  
1915. Knight, V., Fairgreen cottage, Glemsford, Suffolk, England.  
1914. Lambourne, J., Department of Agriculture, Kuala Lumpur.  
1926. Lamin bin Kassim, Police District, Lahat, Perak.  
1926. Lankamin bin Haji Muhammad Tahir, Kuala Krai, Kelantan.  
1925. Lawes, G.W., Police Headquarters, Kuala Lumpur, Selangor.  
1927. Laycock, J., Raffles Place, Singapore.  
1926. Layman, E.C.H., Section Engineers Office, F.M.S. Railways, Kuala Gris, Kelantan.  
1923. \*Lease, F.E., The Shanty, Chislehurst Hill, Chislehurst, Kent.  
1921. \*Lee, L.G., Labu Estate, British North Borneo.  
1922. \*Leggate, J., Railway Construction, Kuala Lumpur, Selangor.  
1913. \*Leicester, Dr. W.S., Kuantan, Pahang.  
1894. \*Lemon, A.H., c.m.g., Hillbrow, Reigate, Surrey, England. (Vice-President, 1916-18).  
1920. Lendrick, J., 30, Norre Alle, Aarhus, Denmark.  
1926. Leonard, H.G.R., Treasury, Kuala Lumpur, Selangor.  
1925. \*Leonard, R.W.F., Mansfield & Co., Ltd., Singapore.  
1926. Leuthold, W.H., Hooglandt & Co., Singapore.  
1890. Lewis, J.E.A., Harada 698, Kobe, Japan.  
1926. Lewis, Miss M.B., 28, Stacey Road, Cardiff, S. Wales.  
1928. Lewis, T.P.M., Maxwell Road, Ipoh, Perak.  
1927. Leyh, S.G.H., Colonial Secretariat, Singapore.  
1922. Leyne, E.G., Sungai Purun Estate, Seminyih, Selangor.  
1926. Lias, E.T.M., Education Department, Penang.  
1926. Lim Cheng King, c/o The Criterion Press Ltd., Penang.  
1915. Lim Cheng Law, 70, Beach Street, Penang.  
1926. Lim Eng Kah, 6J, Old Pudu Road, Kuala Lumpur, Selangor.  
1925. Linehan, W., Kuala Lipis, Pahang.  
1928. Loch, C.W., Jelapang Tin Dredging Ltd., Ipoh, Perak.  
1926. Logan, S.S., Chartered Bank, Klang, Selangor.  
1918. Loh Kong Imm, 12, Kia Peng Road, Kuala Lumpur, Selangor.  
1914. Lornie, Hon. Mr. J., The Residency, Kuala Lumpur, Selangor.

- 1922. Lowinger, V.A., Survey Department, Kuala Lumpur, Selangor.
- 1907. \*Lyons, Rev. E.S., c/o The Methodist Publishing House, Manila, Philippine Islands.
- 1926. Macaskill, Dr. D.C., Kuala Lumpur, Selangor.
- 1920. \*MacBryan, G.T.M., Kuching, Sarawak.
- 1926. Macdonald, J., Chartered Bank, Kuala Lumpur, Selangor.
- 1910. \*MacFadyen, E., c/o Sports Club, London, England.
- 1920. Mackie, Vivian, Kuala Lumpur, Selangor.
- 1922. Mackness, L.R., Kuala Lumpur, Selangor.
- 1921. MacMillan, I.C., S.S. Police, Singapore.
- 1918. Madge, Raymond, Kuala Lumpur, Selangor.
- 1924. Mahmud bin Mat, District Office, Kuala Lipis, Pahang.
- 1923. Mahmud bin Mohamed Shah, Batu Pahat, Johore.
- 1903. Makepeace, W., 22, Holmes Grove, Henleaze, Bristol, England. (Council, 1914, 1916, 1920; Hon. Libr., 1909-12; Vice-President, 1917; Hon. Secretary, 1918-19).
- 1928. Malacca Library, The, Malacca.
- 1926. Malay College, The, Kuala Kangsar, Perak.
- 1927. Malleson, B.K., Sungei Kruit Estate, Sungkai, Perak.
- 1921. Manchester, H.L., Municipal Offices, Singapore.
- 1916. Mann, W.E., c/o Burt Myrtle & Co., Batavia, Java.
- 1929. Marjoribanks, Dr. E.M., Kuching, Sarawak.
- 1907. \*Marriner, J.T., Kuantan, Pahang.
- 1926. Marsden, H., Institute for Medical Research, Kuala Lumpur.
- 1920. Marsh, W., Municipal Offices, Singapore.
- 1927. Marshall, A.O., Borneo Motors Ltd., Singapore.
- 1909. Marshall, H.B., Carbis Bay, Cornwall, England.
- 1925. \*Martin, W.M.E., 12, Norham Road, Oxford, England.
- 1923. Martyn, C.D., Jesselton, British North Borneo.
- 1921. Mather, N.F.H., Federal Secretariat, Kuala Lumpur, Selangor.
- 1926. Matthews, J.J., c/o The Overseas League, Park Place, St. James' Street, London, S.W.1, England.
- 1921. Maxwell, C.N., Sitiawan, Perak.
- 1922. May, P.W., c/o Spicers Export Ltd., 51, Robinson Road, Singapore.
- 1928. Mayne, A.F., Kelubi Estate, Jitra, Kedah.
- 1914. Mead, J.P., Batu Gajah, Perak.
- 1924. Meade, J.M., Telok Anson, Perak.
- 1928. Mee, B.S., Forest Department, Kuala Lumpur, Selangor.
- 1927. Megat Yunus bin Isa, Land Office, Telok Anson, Perak.
- 1928. Meyer, L.D., Superintendent of Surveys, Kuala Trengganu.
- 1926. Middlebrook, S.M., c/o Secretariat, Seremban.

1926. Middlemas, N.A., Kuching, Sarawak.  
1926. \*Miles, C.V., Rodyk and Davidson, Singapore.  
1926. Millar, G.R.M., Tranquerah, Malacca.  
1920. Millar, G.W.R., 41, Coates Gardens, Edinburgh, Scotland.  
1925. Miller, G.S., Edendarroch, Loch Lomond, Scotland.  
1921. \*Miller, J.I., c/o Secretariat, Singapore.  
1926. Millington, W.M., The Residency, Kuala Trengganu.  
1925. Mills, G.R., Kinta Kellas Estate, Batu Gajah, Perak.  
1926. Mills, J.V., Solicitor-General's Chambers, Government Offices, Singapore.  
1924. Mills, L.L., Kuala Trengganu, Trengganu.  
1925. Milne, Charles, 420, Great Western Road, Aberdeen, Scotland.  
1919. Missionary Research Library, 419, Fourth Avenue, New York City, U.S.A.  
1924. Mohamed Ibni Sultan Abdul Hamid Halimshah, Tengku, Alor Star, Kedah.  
1922. Mohamed Ismail Merican bin Vafoo Merican Noordin, Legal Adviser's Office, Alor Star, Kedah.  
1927. Mohamed Noor bin Mohamed, Free School, Penang.  
1922. Mohamed Said, Capt. Haji, Bukit Timbalan, Johore.  
1921. Mohamed Salleh bin Ali, Dato, Johore Bahru, Johore.  
1921. Mohamed Sheriff bin Osman, Land Office, Alor Star, Kedah.  
1926. Mohammed Ameen Akbar, 4, Birch Road, Kuala Lumpur.  
1926. Moir, G.T., c/o Sarawak Oilfields Ltd., Miri, Sarawak.  
1920. Monk, H.F., Grik, Upper Perak.  
1926. Montgomery, A., Kota Bharu, Kelantan.  
1926. Moonshi, Dr. H.S., 742, North Bridge Road, Singapore.  
1921. Morgan, S., Wilde & Co.. Ltd., 12, Market Street, Kuala Lumpur, Selangor.  
1926. \*Morice, James, Kuantan, Pahang.  
1920. \*Morkill, A.G., District Office, Malacca.  
1920. Mowbray, G.A. de C. de, Commissioner of Land, Trengganu.  
1926. Mumford, E.W., Police Department, Ipoh, Perak.  
1915. \*Mundell, H.D., c/o Sisson and Delay, Singapore.  
1913. Murray, Rev. W., Gilstead Road, Singapore.  
1926. Myddelton, Hugh, The Residency, Tawao, British North Borneo.  
1928. McAlister, D., Sandakan, British North Borneo.  
1909. McArthur, M.S.H., c/o The Crown Agents, 4, Millbank, London.  
1920. MacCabe, Dr. J.B., Kapoewas Rubber Estate, Soengei Dekan, Pontianak, Borneo.  
1923. McKerron, P.A.B., Brunei, Borneo.



1910. McLean, L., c/o The Crown Agents, 4, Millbank, London.
1921. McLeod, D., King Edward's School, Taiping, Perak.
1917. Nagle, Rev. J.S., 2732, N. Calvert Street, Baltimore, Md., U.S.A.
1922. Nash, G.H., Kuala Pilah, Negri Sembilan.
1927. Natividad, P., Forestry Department, Sandakan, British North Borneo.
1926. Neave, J.R., Assistant Adviser, Kota Tinggi, Johore.
1926. Neil, W.H.E., Topographical Surveys, Alor Star, Kedah.
1921. Neilson, Major J.B., Raffles Institution, Singapore.
1926. Nicholas, Dr. C.J., General Hospital, Alor Star, Kedah.
1923. Nicholson, J.E.H., c/o The Eastern Extension Telegraph Co., Singapore.
1927. Nisbet, W., E. A. Barbour Ltd., Union Building, Singapore.
1928. Noble, C., Topographical Survey, Taiping, Perak.
1906. Nunn, B., Galphay Manor, Ripon, England. (Council, 1922).
1923. O'Connell, Lt. B.M., Police Officers Mess, Kuala Lumpur.
1926. Omar bin Endok, Dato, Segamat, Johore.
1911. O'May, J., c/o Harrisons and Crosfield Ltd., 1-4, Great Tower Street, London, England.
1916. Ong Boon Tat, 51, Robinson Road, Singapore.
1926. Ong Teng Ngah, Victoria Institution, Kuala Lumpur, Selangor.
1923. Opie, R.S., Box 140, Kuala Lumpur, Selangor.
1926. Orang Kaya Kaya Stia Bejaya di Raja, Kuala Kangsar, Perak.
1921. Orchard, H.A.L., Chinese Free School, Cecil Street, Singapore.
1927. Osman bin Talib, Land Office, Taiping, Perak.
1920. O'Sullivan, T.A., Education Office, Kuala Lumpur, Selangor.
1913. Overbeck, H., c/o Behn Meyer & Co., Ltd., Sourabaya, Java.
1925. Owen, A.T., Bukit Batu Estate, Tampin, Negri Sembilan.
1922. Page-Turner, F.W., Simanggang, Sarawak.
1919. Park, Mungo, P.O. Delivery 19, Kuala Lumpur, Selangor.
1908. \*Parr, C.W.C., C.M.G., O.B.E., c/o The Crown Agents, 4, Millbank, London, England. (Vice-President, 1919).
1926. Parry, B.B., P.O., Box 42, Miri, Sarawak.
1927. Partridge, A.T., Jesselton, British North Borneo.
1922. Pasqual, J.C., Perlis, Kedah.

1921. \*Paterson, Major H.S., c/o The Crown Agents, 4, Millbank, London, England.
1926. Patterson, Mrs. M.W., 6, Cairnhill Circle, Singapore.
1921. Peach, Rev. P.L., 68, Larut Road, Penang.
1926. Peall, G.T., Raffles Institution, Singapore.
1921. Pedlow, J., Penang.
1922. Peel, Hon. Sir W., K.B.E., C.M.G., Carcosa, Kuala Lumpur, Selangor.
1928. Penang Free School, Green Lane, Penang.
1926. Penang Library, Penang.
1921. \*Pendlebury, H.M., Selangor Museum, Kuala Lumpur, Selangor.
1926. Pengilley, E.E., District Office, Pasir Puteh, Kelantan.
1924. Pennefather-Evans, J.P., F.M.S. Police, Kuala Lumpur.
1925. \*Penrice, W., c/o Mansfield & Co., Ltd., Singapore.
1914. Pepys, W.E., c/o The Royal Colonial Institute, Northumberland Avenue, London, W.C.2, England.
1920. Peskett, A.D., African Direct Telegraph Co., Free Town, Sierre Leone.
1920. Peters, E.V.,
1925. Pijper, Dr. G.F., Kramat 61, Weltevreden, Java.
1927. Pitt, Isaac, Bried Estate, Bagan Serai Perak.
1921. \*Plummer, W.P., The Observatory, Bidston, Birkenhead, England.
1928. Powell, I.B., Windsor Hotel, Manila, Philippine Islands.
1924. Purcell, V.W.W.S., Chinese Protectorate, Penang.
1926. Purdom, Miss N., Education Office, Kua'a Lumpur, Selangor.
1906. Pykett, Rev. G.F., 5, Logan Road, Penang.
1926. Quah Beng Kee, 15, China Street, Penang.
1926. Rae, Cecil, Ipoh, Perak.
1924. Raja Bendahara of Perak, Kua'a Kangsar, Perak.
1924. Raja Kechil Tengah, Taiping, Perak.
1924. Raja Muda of Perak, Telok Anson, Perak.
1924. Raja Omar bin Raja Ali, Court House, Ipoh, Perak.
1926. Raja Petra bin Raja Mahmud, District Office, Kajang, Selangor.
1926. Raja Ya'acob bin Ja'afar, Magistrate, Klang, Selangor.
1924. Rambaut, A.E., Forest Department, Kuala Lumpur, Selangor.
1924. Rasmussen, H.C., c/o The East Asiatic Co., Singapore.
1917. Rattray, Dr. M.J., c/o The Europe Hotel, Singapore.
1916. Rayman, L., Federal Secretariat, Kuala Lumpur, Selangor.
1923. Reade, C.C., Kuala Lumpur, Selangor.
1926. \*Reay, Mr. Justice J. McCabe, Judge's House, Johore Bahru, Johore.

1927. Redhead, N.R.F., c/o Grindley & Co., 54, Parliament Street, London, S.W.1, England.
1924. Reed, J.G., Klang, Selangor.
1910. \*Reid, Dr. Alfred, Kuala Lumpur, Selangor.
1926. Rennie, A.A., Kuching, Sarawak.
1921. \*Rex, Marcus, Kuala Lumpur, Selangor.
1926. Rhodes, H., c/o Logan and Ross, Penang.
1915. Richards, A.F., Federal Secretariat, Kuala Lumpur, Selangor. (Council, 1923, 1926-7).
1911. Richards, R.M., c/o Caledonia Estate, Province Wellesley.
1923. Ridout, F.G., c/o Harbour Board, Singapore.
1926. \*Rigby, W.E., c/o The Chartered Bank, Singapore.
1912. Robertson, J., The Arcade, Singapore.
1926. Robinson, F., Alor Star, Kedah.
1911. \*Robinson, H., 55, St. George's Square, London, S.W.1, England. (Council, 1916-20; Vice-President, 1922-3).
1926. Robinson, P.M., c/o The Eastern Smelting Co., Ltd., Penang.
1923. Robson, J.M., Malay Mail Office, Kuala Lumpur, Selangor.
1928. Roche, F.R., Rubber Estates of Krian Ltd., Bagan Samak, Kedah.
1916. Rogers, A., P.W.D., Singapore.
1926. Rogers, M.F., Vimy Estate, Kundang, Kuang, Selangor.
1924. Rooke, C.E., c/o F.M.S. Railways, Kuala Lumpur, Selangor.
1921. Ross, E.A., Singapore.
1917. \*Rowland, W.R., Schloss Kalling, Post Moosen a.d. Bils, Oberbayern, Germany.
1922. Russell, D.J.A., Kuala Lumpur, Selangor.
1924. Ryves, V.W., Takau Estate, Rantau, Negri Sembilan.
1924. Samah bin Haji Ali, Pekan, Pahang.
1926. Sanger-Davies, A.E., Forest Office, Kuala Lumpur, Selangor.
1923. \*Sansom, C.H., Police Headquarters, Singapore.
1919. \*Santry, D., c/o Swan and Maclaren, Singapore.
1896. \*Saunders, C.J., The Lawn, Barcombe Mills, Nr. Lewes, Sussex, England. (Vice-President, 1910-11, 1914-15; President, 1916-18).
1923. Savage, H.E., Kuala Trengganu, Trengganu.
1926. Sayid Hassan bin Sayid Zain, Ag. Land Officer, Yen, Kedah.
1926. Sayid Jan bin Sayid Asgar Ali, Government English School, Sungai Patani, Kedah.
1922. Sayid Mohamed Idid bin Ali Idid, Alor Star, Kedah.
1926. Sayid Shaidali, Government English School, Batu Gajah, Perak.

1921. Schider, Dr. R., P.O. Box 12, Miri, Sarawak.  
1926. Scott, Miss A.M., Sentosa Hall, Singapore.  
1920. \*Scott, Dr. Waugh, Sungai Siput, Perak.  
1906. Scrivenor, J.B., Batu Gajah, Perak. (Vice-President, 1922, 1924, 1926-8).  
1915. \*See Tiong Wah, Balmoral Road, Singapore.  
1922. Sehested, S., Chartered Bank, Penang.  
1927. \*Sells, H.C., Satuan, Burnham, Buckinghamshire, England.  
1923. Shearn, E.D., c/o Pooley & Co., Klyne Street, Kuala Lumpur.  
1926. Sheffield, J.N., Topographical Surveys, Taiping, Perak.  
1927. Sheffield, W.D., Tanjong Pau Estate, Jitra, Kedah.  
1923. Sheikh Abdullah bin Yahya, Lt., Bukit Timbalan, Johore.  
1925. Shelley, M.B., Treasury, Singapore.  
1925. Shorland, C.W., Labour Office, Penang.  
1924. Sime, F.D., Bukit Lintang Estate, Malacca.  
1926. Simmons, Hon. Mr. J.W., Seremban.  
1921. Simpson, P., Presgrave and Mathews, Penang.  
1927. Simpson-Gray, L.C., Asst. Controller of Labour, Seremban, Negri Sembilan.  
1909. \*Sims, W.A., 30, Park Hill, Carshalton near London, England.  
1928. Sivam, M.S., District Office, Miri, Sarawak.  
1928. Sivapragasam, T., District Office, Port Dickson, Negri Sembilan.  
1926. Skinner, C.F., Beaufort, Jesselton, British North Borneo.  
1921. Skrine, W.F. de V., Mukah, Sarawak.  
1926. \*Sleep, A., Kuala Selangor, Selangor.  
1922. Small, A.S., Treasury, Johore Bahru, Johore.  
1922. Smart, Dr. A.G.H., Chief Medical Officer, Penang.  
1924. Smedley, N., Raffles Museum, Singapore. (Hon. Treasurer, 1926-7; Asst. Hon. Secretary, 1928).  
1928. Smith, A. St. Alban, Seletar, Singapore.  
1926. Smith, C., Kuantan, Pahang.  
1912. Smith, Prof. Harrison W., c/o John W. Worthington, 30, State Street, Boston, Mass., U.S.A.  
1924. Smith, J.D. Maxwell, Temerloh, Pahang.  
1921. Smith, Capt. S.R., Kuala Lumpur, Selangor.  
1929. Smith, W.T.H., Kuching, Sarawak.  
1928. Sollis, C.G., Inspector of Schools, Penang.  
1910. Song Ong Siang, C.B.E. Aitken and Ong Siang, Singapore.  
1921. South, F.W., Department of Agriculture, Kuala Lumpur, Selangor.  
1921. Speers, W.E., "San Souci" House, Larne, Co. Antrim, Ireland.  
1925. Sproule, Hon. Mr. Justice P.J., Supreme Court, Penang.

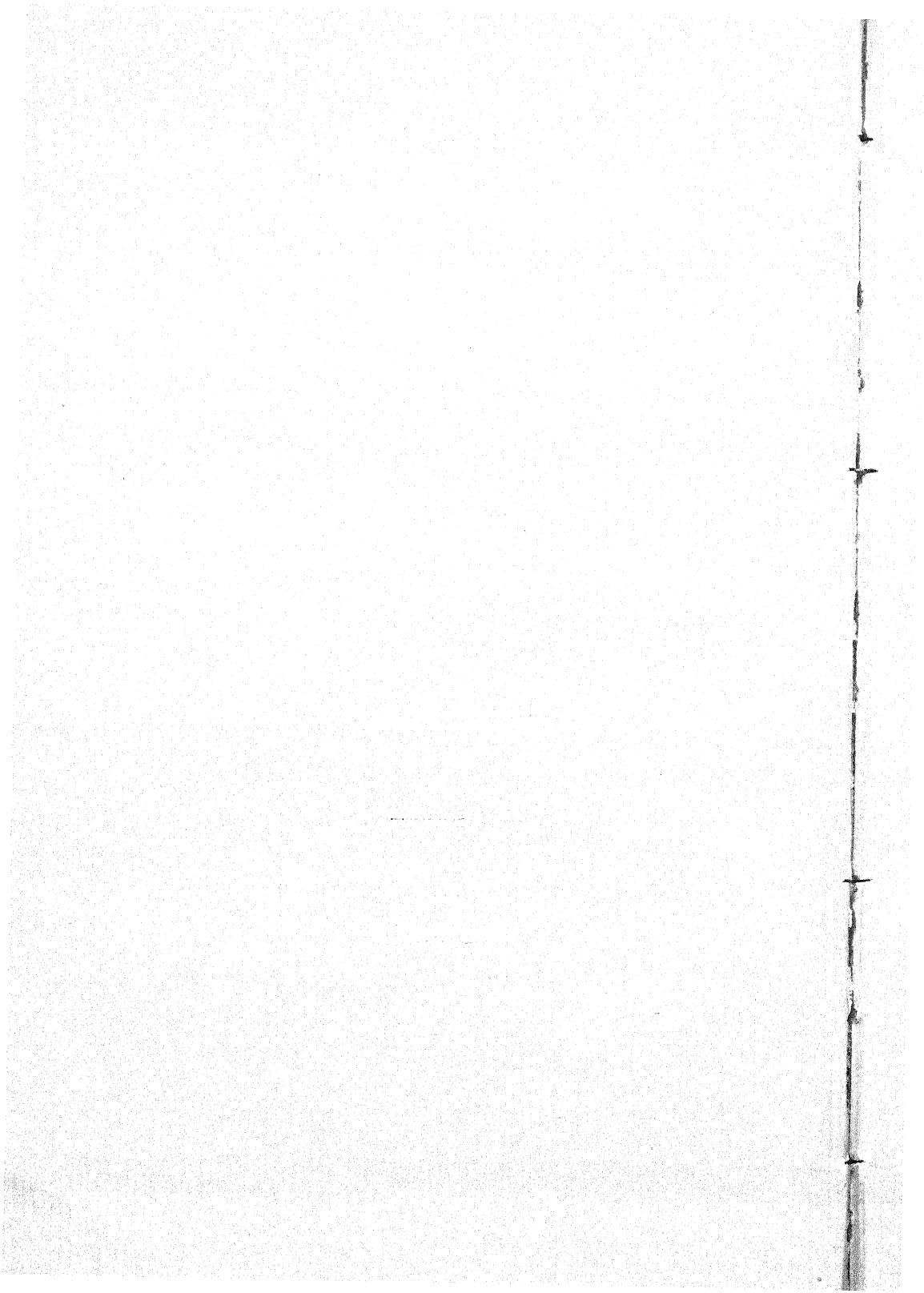
- 1927. Staines, E.A., General Post Office, Kuala Lumpur.
- 1918. Stanton, Dr. A.T., Colonial Office, Downing Street, London, S.W.1.
- 1928. Stanton, W.A., Brooklands Estate, Banting, Selangor.
- 1925. Stark, W.J.K., Telok Anson, Perak.
- 1926. Stephenson, Miss E.M., Bukit Tanggah, Singapore.
- 1926. Stevens, E.H., c/o The British American Tobacco Co., Ltd., Keppel Road, Singapore.
- 1920. Stevens, F.G., c/o Rodyk and Davidson, Singapore. (Council, 1914-15).
- 1910. \*Still, A.W.,
- 1917. \*Stirling, W.G., c/o The Chinese Protectorate, Singapore. (Council, 1923-5, 1927).
- 1921. Stooke, G. Beresford, c/o The Secretariat, Nairobi, Kenya, East Africa.
- 1928. Stookes, Dr. V.A., Sandakan, British North Borneo.
- 1921. Stowell, de La M., Bukit Mertajam, Province Wellesley.
- 1926. Street, A.C., 13, Palm Bungalow, Kuching, Sarawak.
- 1926. Strouts, E.A., Kuala Pilah, Negri Sembilan.
- 1927. Strugnell, E.J., Forest Office, Kuala Lumpur, Selangor.
- 1921. Stubington, W.H., Bentong, Pahang.
- 1910. Sturrock, A.J., c/o The Crown Agents, 4, Millbank, London. (Vice-President, 1924).
- 1926. Sultan Idris Training College, Tanjong Malim, Perak.
- 1927. Sungai Patani Government English School, Sungai Patani, Kedah.
- 1921. Sutcliffe, H., Research Laboratory, Pataling, Selangor.
- 1912. Swayne, J.C., Rejang, Sarawak.
- 1926. Swindell, Ven. Archdeacon F.G., 9, Fort Canning Road, Singapore.
- 1923. Sworder, G.H., Taiping, Perak.
- 1926. Sworder, J.C., Pekan, Pahang.
- 1918. \*Sykes, G.R., Chinese Protectorate, Kedah.
- 1925. Talalla, H.B., 12, Perak Road, Kuala Lumpur, Selangor.
- 1927. Tallack, C.C., Silimpocon, East Coast Residency, British North Borneo.
- 1908. Tan Cheng Lock, Hon. Mr., 59, Heeren Street, Malacca.
- 1926. \*Tan Soo Bin, 9, Boat Quay, Singapore.
- 1915. Tayler, C.J., Kuala Sepang Coconut Estate, Sepang, Selangor.
- 1928. \*Taylor, E.N., Rembau, Negri Sembilan.
- 1921. Taylor, E.R., Newlands, Grange-over-Sands, Lancashire, England.
- 1925. Taylor, W.C., Butterworth, Province Wellesley.
- 1925. Taylor, W.R., Maclaine Watson & Co., Batavia, Java.
- 1926. Templeton, T.V., Alor Star, Kedah.
- 1926. Termansen, V., Kuala Hau, Kelantan.

1921. Terrell, A.K.à'B., Presgrave and Mathews, Penang.  
1927. Thaver, K.V., Methodist Boys' School, Kuala Lumpur, Selangor.  
1927. Thillaimuthu, S., Kennedy Burkill & Co., Ltd., Ipoh, Perak.  
1928. Thomas, Mrs. C.M., 38, Barker Road, Singapore.  
1921. \*Thomas, L.A., Chief Police Office, Singapore.  
1926. Thomas, T.J., 129, Green Lane, Penang.  
1927. Thomson, G.M., Gunong Ledang Estate, Tangkah, Johore.  
1920. Thomson, Hon. Mr. H.W., British Residency, Taiping, Perak.  
1923. Thorne, Hon. Mr. Justice W.H., Ipoh, Perak.  
1925. Thurston, J.B.H., Kota Tinggi Estate, Kota Tinggi, Johore.  
1926. Tidman, S.T., Kerilla Estate, Kelantan.  
1926. Toyo Bunko, 26, Kami-Fujimayecho, Hongo, Tokyo, Japan.  
1927. Turner, R.A., Asiatic Petroleum Co., Ltd., Singapore.  
1923. Undang of Rembau, The, c/o Kendong Station, Negri Sembilan.  
1925. Venables, O.E., Seremban, Negri Sembilan.  
1928. Vernon, Dr. G.H., Thursday Island, Australia.  
1927. Vethavanam, James Roberts, Bungsar Road, Kuala Lumpur.  
1926. \*Waddell, Miss M.C., Government Girls School, Alor Star, Kedah.  
1922. Walker, E.G., c/o United Engineers Ltd., Singapore.  
1926. Walker, H. Hopson, Klang, Selangor.  
1926. \*Wallace, W.A., Revenue Surveys, Taiping, Perak.  
1926. Walshe, N.P., c/o Mansfield & Co., Ltd., Penang.  
1921. Walton, B.S., Kota Bharu, Kelantan.  
1923. Wan Idris bin Ibrahim, Muar, Johore.  
1926. Wan Mohamed Ali bin Wan Omar, District Office, Kuantan, Pahang.  
1922. Wan Yahya bin Wan Mohamed Taib, Alor Star, Kedah.  
1922. Ward, D.J., c/o The Chartered Bank, London, England.  
1927. Watson, E.L., Kuala Lumpur, Selangor.  
1917. Watson, J., Education Office, Kuala Lumpur, Selangor.  
1916. Watson, J.G., Forest Department, Kuala Lumpur, Selangor.  
1916. Watson, Sir Malcolm.  
1926. Wellington, Dr. A.R., Hongkong.  
1926. Wheatley, M., Victoria Institution, Kuala Lumpur, Selangor.  
1926. Wheeler, L.R., Education Office, Malacca.  
1927. White, Rev. Graham, The Parsonage, Ipoh, Perak.

- 1910. Whitehead, C.B., Lower Down Cross, Bovey Tracey, Devonshire, England.
- 1923. Whitfield, L.D., Government English School, Kuala Pilah, Negri Sembilan.
- 1926. \*Wilcoxson, W.J., c/o The Straits Trading Co., Ltd., Singapore.
- 1926. Wilhelm, Dr. O., c/o Sarawak Oilfields Ltd., Miri, Sarawak.
- 1926. Wilkinson, Godfrey, c/o Forest Office, Batu Gajah, Perak.
- 1923. Wilkinson, H.B., 65, Harcourt Terrace, London, S.W.10, England.
- 1920. \*Wilkinson, R.J., C.M.G., Poste Restante, Mitylene, Greece.
- 1926. \*Willan, T.L., Gopeng Road, Batu Gajah, Perak.
- 1921. Willbourn, E.S., Batu Gajah, Perak.
- 1926. Williams, A.,
- 1922. Williams, E.B., Federal Secretariat, Kuala Lumpur, Selangor.
- 1921. Williams, E.T., Colonial Secretariat, Singapore.
- 1922. \*Williams, F.L., Chinese Protectorate, Singapore.
- 1921. Williams, R.M., Paterson Simons & Co., Ltd., Singapore.
- 1927. Williamson, Prof. K.B., Medical College, Singapore.
- 1925. Wilson, C., Singapore.
- 1926. Wilson, E.H.,
- 1919. Wilson, F.K., c/o Federal Secretariat, Kuala Lumpur.
- 1910. \*Winkelmann, H.,
- 1926. Winnington-Ingram, E.A., Kuala Lumpur, Selangor.
- 1923. Winson, V.H., Office of the Senior Engineer, P. and T. Dept., Penang.
- 1904. Winstedt, Hon. Dr. R.O., C.M.G., D.LITT., Education Office, Singapore. (Vice-President, 1914-15, 1920-1, 1923-5; President, 1927).
- 1925. Witcomb, L.A., Adamson, Gilfillan & Co., Ltd., Penang.
- 1918. Wolde, B., 41, Cantonment Road, Penang.
- 1902. Wolff, Hon. Mr. E.C.H., Sandihayes, Bitterne Park, Southampton, England.
- 1927. Wood, D.D., Sandakan, British North Borneo.
- 1908. \*Wood, E.G., c/o King & Co., 65, Cornhill, London, England.
- 1913. Wood, W.L., Istana Gardens, Johore Bahru, Johore.
- 1920. Woolley, G.C., Jesselton, British North Borneo.
- 1922. Woolley, H.W., Forest Office, Johore Bahru.
- 1927. Woolley, J.B., Long Stanton Vicarage, Cambridge, England.
- 1922. Worley, N.A., Kuala Lumpur, Selangor.
- 1911. Worsley-Taylor, F.E., Newton Hall, Newton, Clitheroe, England.

1905. \*Worthington, Hon. Mr. A.F., Kuala Lipis, Pahang.  
(Vice-President, 1924).
1921. Wurtzburg, Major C.E., c/o Mansfield & Co., Ltd.,  
Singapore. (Council, 1924-6; Hon. Secretary, 1915;  
Vice-President, 1927).
1914. Wyley, A.J., Lebong Donok, Benkoelen, Sumatra.
1923. Wynne, M.L., Police Office, Kuala Lumpur, Selangor.
1926. Yahya bin Ahmad Afifi, 70, The Arcade, Singapore.
1923. \*Yates, H.S., P.O. Box 95, Berkeley, California, U.S.A.
1917. \*Yates, Major W.G.,
1928. Yeoh Chenag Ann, 117, Beach Street, Penang.
1920. \*Yewdall, Capt. J.C., Sitiawan, Perak.
1927. Young, C.G., Rubana Estate, Telok Anson, Perak.
1916. Young, E. Stuart, Caixa 675, Rio de Janeiro, Brazil,  
South America.
1904. \*Young, H.S., Rosemount, Tain, Rosshire, England.
1920. Zainal Abidin bin Ahmad, Sultan Idris Training  
College, Tanjong Malim, Perak.
1927. Zumstein, R.B., Anglo Chinese School, Penang.
-

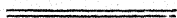




# THE CUSTOMARY LAW

OF

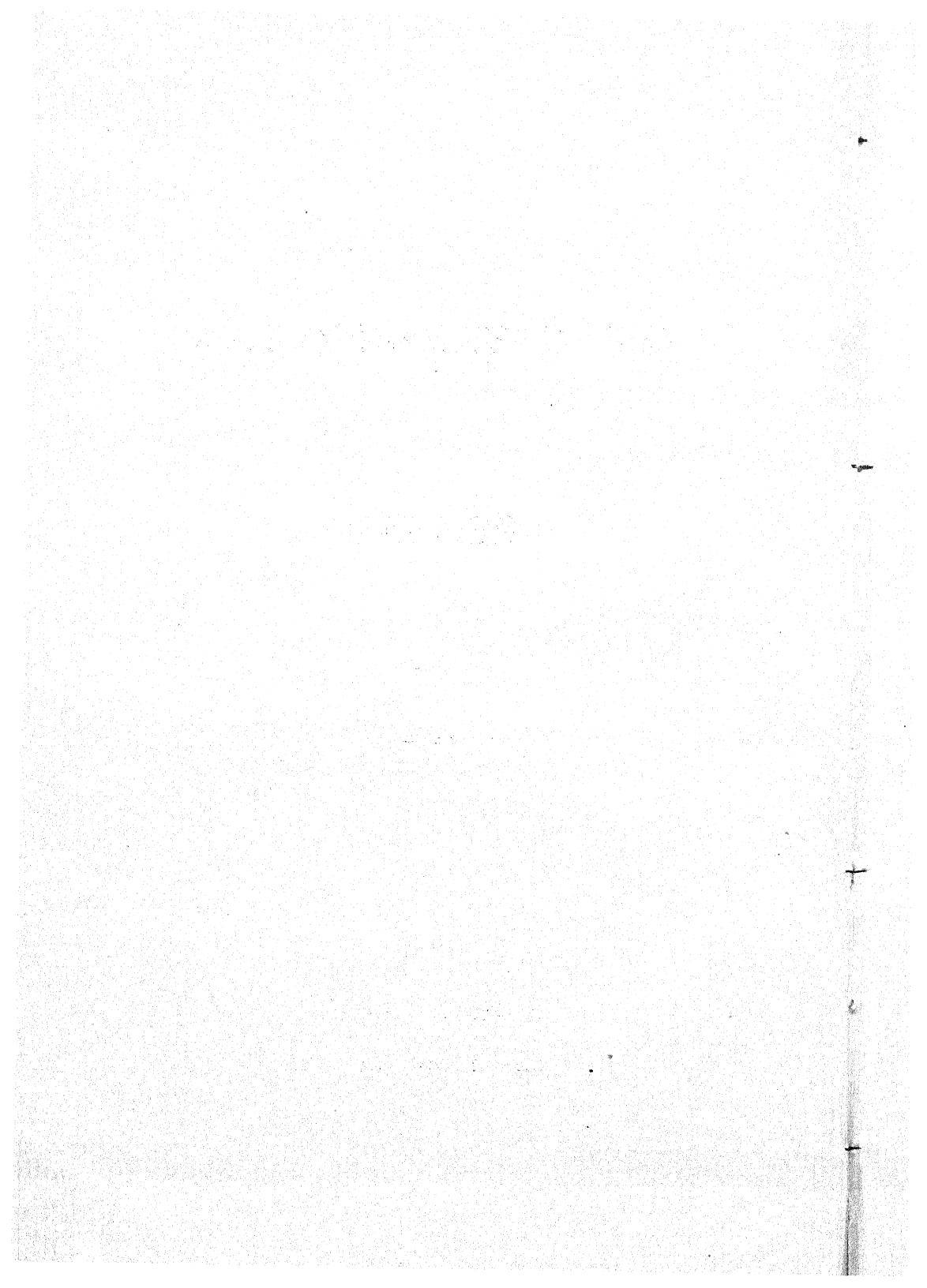
## REMBAU



BY

E. N. TAYLOR,

Malayan Civil Service.

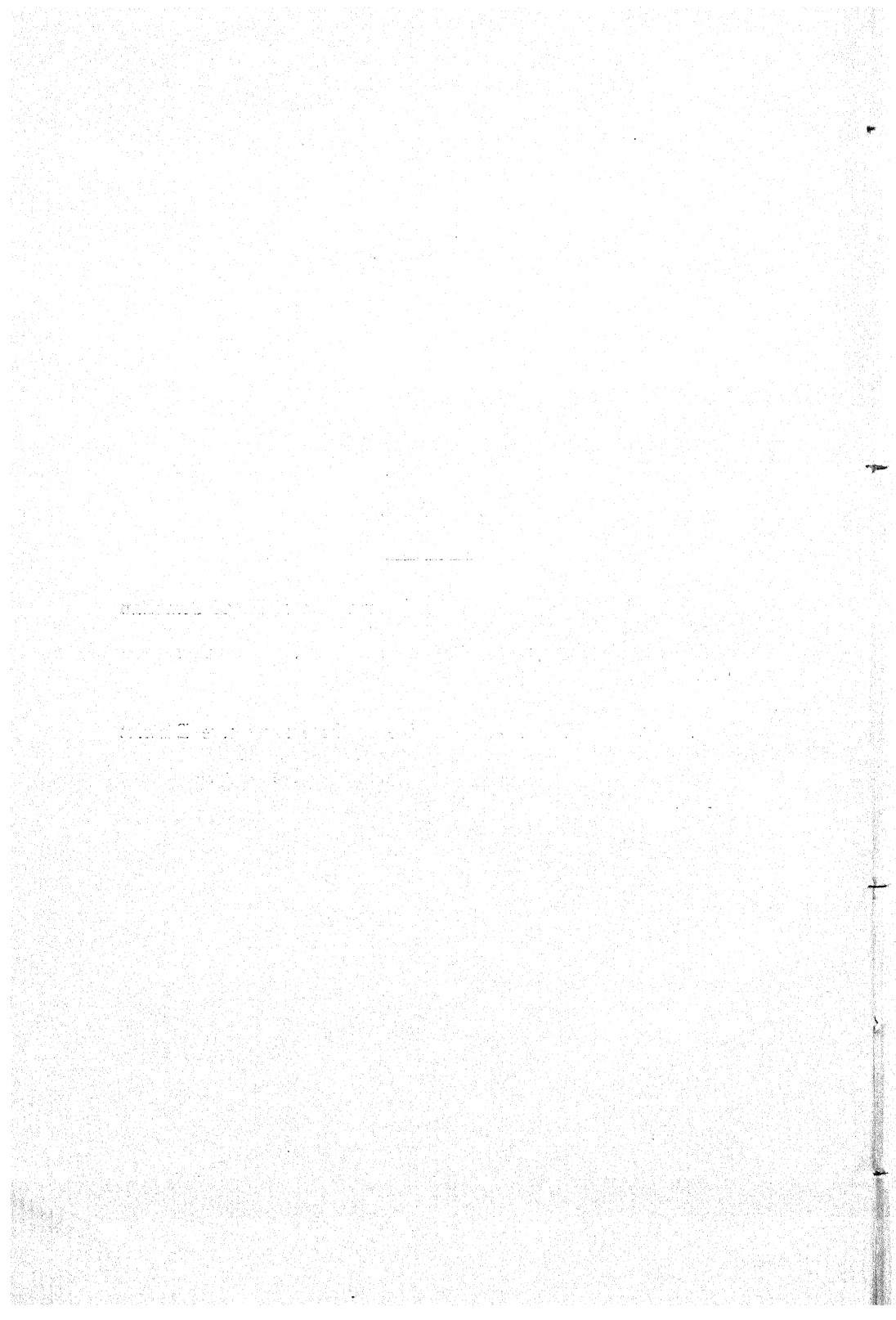


## PREFACE.

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The author is indebted to the Government of Negri Sembilan for permission to use judicial and official records, and to the Hon. Mr. E. C. H. Wolff, c.m.g., for invaluable advice on several points of peculiar difficulty.

Most cordial thanks are also due to three successive District Officers, Messrs. G. A. de C. de Moubray, G. M. Kidd and G. Hawkins, for continuous encouragement and assistance during the progress of the work.



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**NOTE.**

Most of the Malay words and phrases used in the treatise are explained in the GLOSSARY which will be found on pages 268—277.

## INTRODUCTION.

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"Judicial and administrative officers, if they are to do their work successfully, require a more than superficial acquaintance with the country and people to which they are sent; familiarity with the legal notions and institutions, the habits and modes of thought, in a word the *adat* of the people is indispensable to them....for the natives set a high value on their *adat*".

It has always been known that the people of Rembau follow a matriarchal system derived from Sumatra, not found in the Peninsula outside Negri Sembilan and Malacca and differing in some respects from the cognate customs practised in the neighbouring districts of Kuala Pilah and Naning, but no satisfactory account of that system has ever been compiled.

It is now nearly twenty years since the publication, as No. 56 of this Journal, of "Rembau—its History, Constitution and Customs" by Parr and Mackray, a most interesting and useful work which will always be read with gratitude, especially by those who, from practical experience, can appreciate the difficulty with which the information was educed from the old fashioned Malays of Rembau. On the legal side, however, that account of the *adat* is necessarily incomplete, and is indeed in some respects inaccurate, because in those days the volume of litigation was small, records were scanty, and on very few points was any real authority available.

With the general development of the country the volume of routine administrative work steadily increased, and this, by confining District Officers more and more to the office deprived even the few who remained in Rembau for any length of time, of opportunity to acquire an adequate knowledge of the *adat* by direct contact with the life of the people in the *kampongs*. In the absence of any sufficient work of reference they were compelled in disputed cases to adopt the practice of calling expert witnesses, usually the tribal chiefs (*lembagas*), to give evidence of the custom; naturally they found that the experts differed.

" 'Believe no expert', say the cynic Bar,  
Yet how unjust who all alike deride.  
This swears white black, but straightway—*haud impar*—  
An equal sage approves the candid side."

This comment by Mr. Justice Darling (as he then was) has reference to the highly qualified experts who practise in the High Court in England. How much more conflict therefore is to be expected from old and illiterate *kampung* Malays? The most striking examples are connected with what is perhaps the best



known of all current sayings, namely *mati bini tinggal ka-laki*.\* It is admitted by every one that this saying relates to the devolution of property acquired by a married pair yet scarcely ever have any two witnesses agreed as to its application to any given case.

In *Miah v. Safar* for instance, three witnesses called by the same party respectively stated:—

- (a) the property goes to the husband
  - (b) it goes to the children
  - (c) it is divided.
- (See page 79).

In such circumstances it is not surprising that many officers despaired of ever obtaining a clear statement of a point of *adat*, and indeed some of them have said in their haste that all *lembagas* are liars—yet they themselves were largely to blame. It can indeed be proved from Records that when it happened to suit the interests of their own tribes *lembagas* have given directly contradictory evidence before the same judge within a short period but it is palpably absurd to expect a *lembaga* to come into court and make a clear and crisp statement of the strictly relevant law, and the general failure to examine these men at any length shews that Collectors and Residents have in fact acted as though that was what they expected; had they gone more deeply into the matter they would have found that many apparently conflicting statements can be reconciled.

The truth is that like the six blind men of Hindustan in the fable of our childhood “each was partly in the right and all were in the wrong.” If patiently questioned almost any *lembaga* will admit that in its true form the saying referred to is “*mati bini tinggal ka-laki kalau tiada anak antara berdua nya*”†—the omission of these vital words of qualification of course inverts the sense of the statement.

This question became a major issue in the appeal of Talib from the first judgment delivered in Rembau by the present writer. The case is reported at page 235. The Commissioner of Lands, an officer of great legal experience, found himself unable to decide the point on the material before him, and wrote to the Resident:—

“It was somewhat of a shock to me to find that in the year 1926 the customs governing the most elementary and frequently recurring matters of succession to land were in dispute, and to find parties calling witnesses to testify to the custom applicable just as if the point at issue was entirely new and had never been decided before. I

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\*On the death of the wife (the property) remains to the husband.

† If there is no child of the marriage.

submit that every effort ought to be made to remedy this state of things because it wastes much time, is conducive to perjury, and offends against the principle that law, and custom having the force of law, should be ascertained and certain."

On his recommendation all Collectors in the districts where *adat* obtains were instructed to keep records of their decisions on disputed points (N. S. 2078/26).

The particular case had been referred back to the trial Collector to take further evidence of the custom, and to seek for precedents. It was found that contrary to the Commissioner's assumption, no decision had been given on the point specifically referred, but in the course of the search much useful information was collected and it was decided, with the support and approval of the Government of Negri Sembilan, to compile a full account of the custom of Rembau so far as it could be determined with a reasonable degree of certainty. The problem was to answer the question—"what really is the *adat* now?" In an atmosphere of ignorance and perjury current opinion is almost useless, and statements as to what it was long ago, or what it is in other places, have little value, but it seemed that an answer to the question "what has the *adat* been in actual practice during the last few years?" might furnish the basis of a solution.

Every Land Case, relevant or irrelevant, of which a record survives, has been examined and those which were considered "reportable" were reduced to the conventional concise form in which they are now presented. A great number of the older cases proved useless because the notes were not recorded with a view to the future; few of them contain any judgment, apart from the bare decision, and it is not always possible to make out what view the Collector took of the facts, or which witnesses he believed; others contain no reference to the titles or do not show whether the land involved was ancestral or acquired; from these no inference can safely be drawn. Very few uncontested cases have been reported because they naturally do not contain a full statement of the circumstances; for example the mere fact that one *charian laki-bini* lot was transmitted to the widower is no ground for saying that in general such property passes to the widower; there may have been no children, or there may have been several other lots which were transferred to the potential heirs, *inter vivos*. Moreover the mere fact that a particular uncontested case is on its face contrary to established custom is not evidence that the custom was not in fact observed; this point is vividly illustrated by *Imai v. Talib*. (page 84.) On the other hand, a whole series of uncontested cases, nearly all of which are decided in the same way, is far stronger evidence of custom, than any contested case, no matter how weighty the judgment.

Obviously some process of selection had to be employed. The sole test applied was "Does this case contain a clear decision on an 1929] *Royal Asiatic Society*.

issue of *adat*? ” If this question could be answered in the affirmative a report was drafted, and was only discarded if a stronger case on exactly the same point was afterwards found, or if the point was clearly decided otherwise on appeal. It is most remarkable that so few cases conflict with the general tenor; to each of these attention has been directed in a note.

Meantime, Mr. G. A. de C. de Moubray, M.C.S., a former Assistant District Officer, Rembau who was District Officer, Tampin, during part of 1926, had collected a number of statements made without reference to any actual contest by *lembagas* and others versed in the custom. These statements were collated and used as a basis for the examination of many witnesses in subsequent litigation, and by this means they were checked and amplified and finally incorporated in some of the judgments which are now reported.

A number of points which were doubtful and obscure when the work was commenced have since been cleared up by decisions in disputed cases, and it may be remarked that Rembau Malays are so fond of litigation, and land appeals are so easy and inexpensive, that a judgment at first instance against which the unsuccessful party did not appeal has almost as much authority as an appellate decision.

It is to be emphasised that all these cases were collected and reduced to their present form before any portion of the treatise was written; the reports therefore are not a selection to illustrate the treatise—they are the sources from which the treatise was compiled.

For these reasons it is claimed that this work contains an authoritative statement of the Custom of Rembau, so far as it has been judicially ascertained.

The arrangement of the information was suggested by that of Mr. Justice Innes' well-known work on Land Registration; this was considered the best adapted to the purpose of furnishing judicial officers with a systematic account of the *adat*, to which they might readily refer in the course of their daily work, and on which they might rely with confidence. In the preparation of the Reports, and especially with regard to the headnotes, the words of the Lord Chancellor in *Quinn v. Leatham* have been constantly borne in mind. Lord Halsbury said:—

“ Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there are not intended to be expressions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. . . . . a case is only an authority for that which it actually decides.” [1901 A. C. 506].

These remarks are of general application and should be remembered whenever resort is had to the cases collected here, or indeed

to any other cases, but subject to them, it is submitted that these decisions may safely be followed.

Customary law does not lend itself to codification, and there can never be any finality for the law, even when reduced to enactments, is a living thing. Slowly perhaps, but inevitably, every system must change; unless it steadily develops and adapts itself to the progressing needs of the people it must fall into decay. Some degree of certainty in the law is, however, indispensable to the proper administration of justice, and case law possesses that combination of certainty and elasticity which is best suited to the present needs of Rembau, especially since the principle is one with which the people are familiar. The *adat* was built up to a large extent by decisions of the Ruling Chief and *lembagas*, and is therefore comparable to the Common Law of England which still possesses vitality and adaptability, to a remarkable degree. Within the last year, Mr. Justice Swift, giving judgment against an hotel company for the value of a stolen motor car, said that the case illustrated how the common law of England continued applicable to the changing circumstances of every day life. The long-established law with regard to an inn-keeper's liability was to-day as applicable to chauffeurs and motor cars as it formerly had been to people who rode horses and drove in gigs. (*The Times*, 11th May, 1927).

Many old points of *adat* are still in doubt, and new cases will arise to which old principles must be applied. Changes must come, but they should be allowed to come gradually; if those who administer the law take ample case notes and preserve their decisions in an accessible form the unhappiness of violent changes will be averted. Magistrates may come and go but there can be little doubt that the Malays of Rembau, who are among the most conservative of a conservative race, will cling to their ancient customs so long as they grow rice and own buffaloes—*Biar mati anak jangan mati adat*, says the proverb.\*

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\* Let our children perish, but not our Customs.

# The Customary Law of Rembau.

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## Chapter I.

### THE MATRIARCHAL LAW.

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#### General Principles.

The present condition of the law in Rembau is very complex and can hardly be understood without a brief reference to the history of the State. All accounts of the earlier periods must be to some extent conjectural; the following outline accords with the opinion of the Hon. Mr. E. C. H. Wolff, c.m.g., who was British Resident of Negri Sembilan from 1924 to 1928. [N. S. 1998/27.]

It appears that some centuries ago bands of Malays from the Archipelago invaded Rembau and established a matriarchal state by intermarriage with the aboriginal women, on descent from whom the Biduanda tribe base their claim to be the *waris* or heirs to the soil.

The next phase was one of peaceful colonisation by eleven tribes who emigrated from the Menangkabau Empire, bringing with them their matriarchal system which was in a more advanced stage of development; by adopting this, and so preserving their individuality, the *waris* were able to maintain their political precedence and privileges.

Some centuries later the people were converted to the Muhamadan religion, but retained their pagan law of which they were, and are, extraordinarily tenacious. Apart from this they seem to have had little intercourse with the outside world. The twelve tribes occupied practically the whole of the irrigable valleys in the basin of the Rembau; they formed a political unit with a population homogeneous, self-sufficient and self-supporting; geographically they were isolated and temperamentally they were exclusive; to these causes may be attributed the fact noticed by Wilken as late as 1880, that matriarchal customs have been more purely preserved in Rembau than in the Menangkabau countries from which they were derived.

During the last fifty years the whole of Negri Sembilan has been subjected to a very advanced system of British colonial legislation, enacted and administered in English, and this has superseded the customary criminal law and the old methods of summary distress. As in other States, the Torrens system of registration of title to land has been applied to peasant holdings; its effect has been somewhat limited in favour of tribal holdings by express local enactment but the very partial nature of these modifications and the

general dominance of the codified law have in a great measure obscured the fact that the ancient matriarchal system has survived almost intact.

It must therefore be emphasised that the Custom of Rembau is not merely a species of land tenure but is properly to be regarded as constituting a complete system of personal law which governs not only the tenure and devolution of all property, moveable and immoveable, but also all the major incidents of life including marriage, divorce, guardianship, adoption, obsequies and several kinds of contract. The *adat* also comprises some provisions as to evidence and legal presumption, and the organisation of the State under Malay rule provided courts, with recognised limits of jurisdiction and some rules of procedure.

For many years these customary courts continued to function within a limited sphere, side by side with those set up by Enactments passed under the British administration, and even now they are not wholly abrogated; as recently as 1924 the Supreme Court seriously entertained a plea that a certain matter was *res judicata* of the Court of the *Undang* with the Eight *Lembagas*, and eventually gave judgment for the amount which that Court had found to be due (*Ungkar v. Sichik*, p. 220); these Courts have, of course, no machinery to enforce their decisions and where they still function they are probably to be regarded as in the nature of arbitrators (*Saudah v. Siman*, p. 104).

The fundamental principle of the Custom is tribal—the social unit is not the family but the tribe and therefore all rules affecting persons tend to maintain the integrity of the tribe and all rules affecting property are designed to conserve the property in and for the tribe. It may be laid down as a principle of general application that the solution to any justiciable problem is to be sought, not by considering the question “How does this affect the individual persons concerned?” but by asking “How does this affect the tribe?”

Contrast for example the maxim that “An Englishman’s house is his castle” with the fact that a Rembau man never owns a house at all; throughout his life it is his mother’s house, *rumah mak dia*, which is his “safest refuge”; thither he resorts in times of stress, and especially in the event of conjugal strife, for in his wife’s house he is little more than a lodger and very definitely subordinated to his wife’s relations.

The tribe then is the unit, and it is matriarchal, exogamous and monogamous.

The main object of the *adat* is to provide for the continuance of the tribe through its female members and to prevent alienation of property so that there will always be sufficient to provide maintenance for the women through whom alone the tribe can be continued; the object of every marriage is to continue the tribe—the tribe

always favours daughters rather than sons, because sons only go off and marry and get children in other tribes whereas daughters draw to themselves men from other tribes and bear children in their own tribe. Thus the object of all rules affecting the property of a marriage is to provide for the issue of that marriage. It will be seen that each of the provisions detailed accords accurately with this principle.

It must be borne in mind, more especially by readers who have experience of the *adat* in other places, that in Rembau the man definitely passes into his wife's tribe and becomes the *anak buah* of his wife's *lembaga* and subject to him in all matters affecting her and her family. Every married man, even a *lembaga*, has two capacities. He remains a member of his own tribe for certain limited purposes but he is definitely subject to his wife's *lembaga* in all matters affecting her tribe. This is beyond doubt; the sole exception is the *Undang* himself.

Children, both sons and daughters, belong to their mother's tribe; the ordinary concepts of relationship by half blood have no application; the children of a man by different wives are usually of different tribes, and therefore, for purposes of inheritance, quite unrelated (though of course they would not intermarry). The children of one woman are all brothers and sisters, and the daughters all share the ancestral property equally, quite irrespective of whether their fathers are different. On the same principle the father's sister, though a true aunt according to English ideas, is not regarded by a tribal Malay as in any way related and is never termed *indok*.

The exogamous rule is extremely strict; immediate remarriage into a divorced wife's tribe is absolutely forbidden, and remarriage into a deceased wife's tribe is only permitted in the case of the deceased wife's sister, *ganti tikar*,—an arrangement designed for the benefit of the children whose interests are paramount. In no case can children be removed into the custody of another tribe. The significance of the phrase *ganti tikar* is literal—the married man normally residing with his wife's family. In some of the tribes, however, there are several *perut* having distinct matriarchal origin and between different *perut* intermarriage may be permitted within the tribe; these exceptions are fully stated by Parr and Mackray (in Appendix IV).

The monogamous rule, has been relaxed a little under Muhamadan influence, but even now polygamy is exceptional; the man who takes a second wife is usually in serious difficulties with his first wife's family and no matter how reluctant he may be to partition the property, he is generally forced to divorce her.

### Property.

Property is primarily classified as of two kinds, acquired and ancestral. It is most unfortunate that the entirely foreign distinction between movable and immovable property was ever imported



because it has no significance in relation to the *adat*, and it therefore obscures the real issues and has grievously impeded the administration of justice; the cases *Re Kulop Kidal dec.* (p. 89, 93) and *Re Puan dec.* (p. 168) sufficiently demonstrate the truth of this criticism and also establish the propositions that acquired and ancestral property in chattels are subject respectively to the same rules as acquired and ancestral property in land.

From the fundamental principle that the matriarchal tribe is the social unit, four cardinal rules of devolution have been deduced:—

- (a) all property vests in the tribe, not in the individual;
- (b) acquired property, once inherited, becomes ancestral;
- (c) all ancestral property vests in the female members of the tribe;
- (d) all ancestral property is strictly entailed in tail female.

As a person may please himself whether he acquires property or not, any property which he does acquire is not entailed in the first instance, unless of his own volition he expressly entails it, and he is at liberty to dispose of it during life, but the moment he dies it becomes entailed and therefore he cannot dispose of it by will (*Re Kulop Kidal dec.* p. 92) and an agreement made during life to vary the succession, is void (*Romit v. Hassan*, p. 63). The rule of *adat* is thus slightly stricter than the rule of Muhammadan Law under which a man has the power to dispose by will of not more than one-third of the property belonging to him at the time of death, (*Shaik Abdul Latif v. Shaik Elias Bux*, I.F.M.S. Rep. 204) Where a person has several heirs they do not necessarily share in the ordinary sense; specific property passes to particular relations according to its classification; there is no question of fractional shares in the estate as a whole.

From the basic principles that property is tribal rather than personal, and that the man passes into his wife's tribe on marriage, it follows that all property earned by a married pair is joint property and that it belongs to the tribe of the wife as long as the marriage subsists. Even if the jointly earned property is land in another State the rules of *adat* apply to it (*Sadiah v. Siakim and Hassan*, a Supreme Court case, reported at page 65) on the general principle that in matters of divorce and intestacy the law follows the person.

Ancestral property is at all times strictly entailed but for certain limited purposes the holder may charge or sell it; if she does so her immediate heirs have a customary option to buy, or hold the charge, in priority to all others, and her tribe in priority to strangers. As regards chattels these limitations have necessarily no other sanction than tribal feeling but as regards land the legislature has taken steps to enforce their observance by providing for the addition to the title of the words "Customary Land," and making all dealings



with land comprised in such titles subject to the assent of the *lembaga*, and the publication of notices.

The words "Customary Land" are ambiguous and have usually been misunderstood; they do not in any way affect the classification of the land under the *adat*, or its devolution (*Romit v. Hassan*, p. 63, *Re Kulop Kidal dec.* p. 90). Ancestral land is entailed, and entailed land ought invariably to be registered as "Customary Land," but it is wrong to argue backwards that all land registered as "Customary Land" must be ancestral; the legislature has expressly authorised the addition of the words to titles for newly acquired land so as to provide for the cases where the acquirer expressly desires to entail the land forthwith.

The words "Customary Land" on a title therefore merely operate as a caveat to protect the rights of the tribe to their control of entailed land—the land is usually ancestral but it may be acquired and in either case it devolves accordingly, and is subject to the appropriate limitations (*Salin v. Lembaga Batu Belang*, p. 132).

Since the words may have been omitted by accident, it does not follow that land held under a title not marked "Customary Land" is not ancestral; it may be ancestral, and if it is ancestral it is entailed, the absence of the words only means that the land has been accidentally exempted from the caveat which protects the entail. If by reason of the accident the land has been disposed of to an entire stranger the entail is broken, but if it has been disposed of to a person subject to the custom who had actual or constructive notice of the facts, the disposal is voidable and the heiress in tail can recover the land (*Bujok v. Tiamah*, p. 183, *Re Munap and Salleh*, p. 133).

Entailed land which has been sold subject to tribal options continues to be subject to options, even after transfer to another tribe, though it may have become the acquired property of the purchaser (*Dinah v. Sinoi*, p. 188). The words "Customary Land" therefore are not removed from a title on transfer.

Land in another State, if held subject to the custom as in *Sadiah v. Siakim* (p. 65), would in due course become ancestral if it remained in the tribe but the title could never be inscribed "Customary Land" because the special Enactment is strictly local; the case cited shows, however, that the Supreme Court will recognise and enforce the *adat* in such circumstances so it seems clear that the entail could be protected by an ordinary caveat.

### Funeral Expenses.

Funeral expenses are a matter of grave importance; they include not only the actual burial charges but also the expenses of the last illness and the cost of the customary feasts which are held on the third, seventh, fourteenth, fortieth and hundredth days, and are called

respectively, *meniga hari*, *menujoh hari*, *dua kali menujoh*, *ampat puloh hari* and *sa-ratus hari*. Some of these may be omitted; the most important one is the last, especially in the case of a married person because on that day the two families meet together with their respective tribal authorities (not always the *lembagas*) to settle the questions of property which necessarily arise on the disruption of the link between the two tribes.

Funeral expenses are chargeable:—

- (a) in the case of a child or unmarried girl—on the joint property of the parents;
- (b) in the case of an unmarried man—on his personal acquired property or, if he had none, on his mother's or sister's ancestral property;
- (c) in the case of a married person of either sex—on the joint property of the marriage, primarily on movable property, and failing that, on land;
- (d) in the case of divorced or widowed persons—on the shares of property acquired before, or during, or after, marriage and failing that, on the ancestral property of the mother's family.

It is a rule that where any individual leaves acquired property the funeral expenses must, if practicable, be limited to that amount, (*Re Badoh dec.* p. 150); only in the last resort may recourse be had to the ancestral.

An aged woman, however, may distribute her property among her daughters or nieces, reserving only a portion by way of *kepan*; in such a case her funeral expenses are chargeable on the property so allocated and a relative who pays them is entitled to the *kepan* in addition to her ordinary share (*Re Miut dec.* p. 219).

It is of the first importance to realise that these funeral expenses are by the custom an actual encumbrance on the appropriate property (*Re Dahil dec.* p. 113, *Re Sitam dec.* p. 222); if it appears that the wrong party has paid them (as he often does where there is a dispute in the family) an order for transmission may be made conditional on the repayment of those expenses (*Niah v. Alias*, p. 81) and the Collector has power to order a portion of the estate to be auctioned if necessary. It is therefore entirely wrong to treat the funeral expenses as an independent debt and tell a party to sue for them in the civil court.

If, however, these expenses have become involved with other matters in dispute a separate trial may be inevitable, and if the property chargeable has been transmitted to, or retained by, a party who did not pay them, a separate action will lie, (*Kassim v. Amun*, p. 160). On the other hand, if a party incurs funeral expenses for which he is not liable, against the wishes of those properly responsible, he cannot afterwards recover (*Ungkar v. Sichik*, p. 221).

### The Value of the Adat.

People who have a merely superficial acquaintance with the *adat* are apt to misrepresent it as a repressive system in some way opposed to liberty. "Why" they exclaim "should not the holder be free to dispose of his land just as he likes?" This attitude of mind results partly from the facile acceptance of a half-truth, and partly from want of the comparative sense. A person subject to the custom has, in general, power to dispose during life of all property acquired by his own exertions, and the limitations imposed by the *adat* on the power to deal with ancestral land are actually less stringent than the old English rules of entail, for in most cases the holder's right to sell is admitted by the tribe—it is only the option to purchase which is claimed. The only absolute limitation is the statutory bar to the disposal of entailed land except to a member of some tribe, and this amounts to very little more than the ordinary Malay Reservation to which the whole of Rembau is subject, because the population is so dense and so homogeneous that the tribal market and the general market for Malay holdings are for all practical purposes co-extensive.

As for denial of testamentary power, it must be remembered that under the Muhammadan Law, which is the only possible alternative, a will purporting to dispose of more than one third of the estate is to that extent void and in most European countries the testamentary power is still rigidly circumscribed by statute. Freedom in this respect is in any event one of the most dangerous of all so-called liberties and the most fruitful of cruel injustice; it gives unlimited scope not only to the caprice and malice of testators but also, as countless English cases show, to the talents of their friends for every form of forgery, perjury and fraud.

The general tendency of the British administration has been to relax, rather than to intensify, the strictness of the *adat*; up to 1909 no single provision of law of a conservative nature was enacted, and in actual practice the Customary Tenure Enactment of 1909 depended mainly on the people themselves for its enforcement—the fact that it achieved its purpose proves the strength of the public opinion in favour of the custom. The Enactment of 1926 is certainly more stringent than its predecessor but it was not intended to alter the incidence of the *adat*—it was passed in order to accommodate the system to concurrent changes in the general land law of the country, and an amendment to remove the inadvertent alterations is now under consideration; the object of the legislature should be to establish a procedure by which the custom in any particular case can be correctly ascertained and to provide safeguards against it being overlooked or overridden.

The custom has been maintained, and is still maintained, because the people themselves cling to it; all their affairs, great and small, are ordered in accordance with its dictates, for *adat* means

more than "law"—it includes the traditions and philosophy which are enshrined in so many homely sayings; of all ancient systems the *adat perpatih* is perhaps the most democratic and the best "understood of the people."

For this reason the custom is a potent force in the development and maintenance of local patriotism and tends to produce a manly and independent outlook. The Rembau Malays are relatively free from the feeling that they live under an alien law; they have definite legal notions which can be expressed in their mother tongue and often in no other, and they are accustomed to look to their tribal chiefs to declare and enforce their rights; the men, and still more noticeably the women, are of a tougher intellectual fibre than the typical Peninsula Malay and far less prone to that casual or fatalistic negligence which is expressed in the phrase *tid'apa*, so rare in Rembau but elsewhere so common.

If it be said that these characteristics tend also to foster the undesirable quality of litigiousness, it may with greater force be retorted that the fault lies rather with those who, by importing the technicalities and arbitrary distinctions of the English law of procedure, which are wholly unintelligible to an illiterate population, made rational administration of the customary law impossible.

## Chapter II.

### ACQUISITION AND MARRIAGE.

#### Acquired Property Generally.

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The rules of *adat* relating to acquired property are so interwoven with questions of marriage and divorce that these two subjects must be considered together.

Acquired property is sharply divided into two classes according to its origin—that acquired by an unmarried person, *charian bujang*, which plainly belongs to one tribe, and that acquired by the joint efforts of a married pair, *charian laki-bini*, in which two tribes are interested; on divorce this joint property is divided. Both husband and wife may possess property acquired outside that particular marriage; such property is not joint but separate; they continue to hold it on behalf of their respective tribes.

*Harta pembawa* means the personal estate of a married man, the property brought by him to the tribe of his wife into which he passes on marriage; it may include property of three kinds, *viz.*, his own earnings as a bachelor, *charian bujang*, his share of the earnings of any former marriage, and any ancestral property of his own family in which he holds an interest. (Parr and Mackray, at p.p. 70, 86, distinguish the last as *harta terbawa* but neither current practice nor old records support them and there is definite evidence that *harta terbawa* is not ancestral, see p. 129).

*Harta dapatan* means the separate estate of a married woman and also includes three kinds of property, *viz.*, her own acquisitions as a spinster, divorcée, or widow—*charian bujang* or *janda*,—her share of the earnings of any former marriage, and her ancestral property. The word *dapatan* is highly idomatic; it is antithetic to *charian* and implies that the husband obtains possession without ownership; he has the enjoyment during marriage but has no disposing power; as a trustee he is liable for waste, and he may commit criminal breach of the trust (*P. P. v. Tahir*, p. 102).

Both *pembawa* and *dapatan* may be either moveable or immoveable and it makes no difference whether the party comes into possession of the property before or during the marriage.

It is of the first importance that any such property in cash, *wang pembawa* or *wang dapatan*, should be formally declared to the family of the opposite party at or about the time of marriage or accrual. There is a presumption that any cash or other property of which a married pair obtain possession is *charian laki-bini* and the onus of proving either *pembawa* or *dapatan* is on the claimant; if the declaration has not been duly made it may be impossible to recover.

Neither *pembawa* nor *dapatan* can be extinguished and if any proved article in either category has been sold or exchanged it must be made good out of the *charian laki-bini*. The kind of *harta dapatan* most frequently in dispute is the jewellery given to a girl by her parents, and subsequently pawned by her husband; if he disposes of it without her consent she can sue for it, even during the marriage (*Nyachik v. Ali*, p. 100).

It is important to notice that *charian bujang* becomes *harta pembawa* or *dapatan* on marriage, and also that *charian laki-bini* of one marriage, becomes *harta pembawa* or *dapatan* of a subsequent marriage; each party to a dispute will use the term appropriate to his interest, and this may cause the appearance of conflict between parties who are really agreed on the facts; a given asset which is *harta dapatan* from the point of view of one claimant may still be *charian laki-bini* from that of another. Some confusion is inevitable but as a rule the issues become clear if the Court commences by determining, as points of fact, the classification of the property when it was first acquired and the conditions under which it subsequently changed hands; its classification for the purpose of the adjudication then becomes a question of law, though not always a simple one. *Minah v. Kepam*, reported at page 143, is a typical illustration of this principle.

If *pembawa* or *dapatan* property increases in value during marriage the increase (*untong*) may in some cases rank as *charian laki-bini* and a given lot of land may therefore be in two categories at once, though no shares are registered.

All acquired property becomes ancestral when it has been inherited, and when *charian laki-bini* is divided on divorce the shares become entailed though they cannot yet be classed as ancestral.

The application of all these principles to different sets of circumstances will now be considered in detail.

### Charian Bujang.

Property acquired by an unmarried man is called *charian bujang* and if it is literally his own earnings he has power to dispose of it at will; property acquired by a man's parents and settled on him in childhood is also classed as *charian bujang* (*Tiano v. Si-Alus*, p. 71) but probably he cannot dispose of that without the consent of his mother's family. On marriage *charian bujang* becomes *harta pembawa*, and on dissolution of the marriage it is returned to the man, or his *waris*.

On the death of the holder, whether married or single, *charian bujang* reverts to his *waris* and is distributed according to the rules for ancestral property (*Re Taat dec.*, p. 74). Land in this category is not entailed, and therefore should not be made subject to customary limitations until the death of the acquirer.

The return of *charian bujang* on dissolution of marriage is in all cases subject to any claim for *untong* by the wife or her tribe.

As Malay girls are invariably married very early in life, they never have any actual earnings of their own, and any acquired property they do possess is therefore plainly *harta dapatan*. Women, however, when divorced or widowed can and do acquire property by their own exertions and this is called *charian bujang* or *charian janda*; it is doubtful whether they are at liberty dispose of it without the consent of their daughters. On remarriage such property becomes *dapatan*, and on death it is inherited by all the daughters equally (*Re Sinding dec. p. 75*); it is submitted that this rule would apply to daughters born either before or after the date of acquisition, but there is no case on the point. If the acquirer left no daughter such property would revert to her *waris*.

### Marriage.

The considerations affecting marriage in Rembau are of three distinct kinds. Firstly, the capacity to contract is limited rigidly by the exogamous rule and is almost invariably subject also to the monogamous rule; all questions of property are strictly governed by the matriarchal custom. Secondly, the validity of the contract depends on registration by the *Kathi*, in accordance with the Muhammadan Marriage Enactment—an English statute ancillary to, but outside, the Muhammadan Law. Thirdly, the ceremonies performed, which are similar to those used elsewhere in the Peninsula, are in origin partly Hindu and partly pagan and many centuries pre-Muhammadan; their significance has long been forgotten.

The customary outlook on marriage is illustrated by the saying—

*Nyawa, darah, waris yang punya—*

*Rugi, laba, tempat semenda.*

which means:— “Life and blood belong to the *waris*—loss and gain to the wife’s family,”

These are not strict rules but expressions of the principle that during marriage all the man’s material interests are bound up with the wife’s tribe though his own family continue to be responsible for his life and blood; this responsibility is nowadays mainly technical and formal but the mother and sisters of a sick man not infrequently visit him in his wife’s house bringing medicine and advice. These attentions, chiefly no doubt the latter, are often bitterly resented by the wife who is apt to construe them, and not without reason, as notice of intention to exact a strict account of the *harta pembawa* should the illness prove fatal. The acerbity of their relations at such a time is frequently reflected in the recriminations exchanged between the women of the two families in the subsequent litigation.



The most important applications of the principle of "life and blood" were found in connection with *balas* but these have fallen into desuetude though a modified liability for funeral expenses is still recognised (see "*Bulas*," p. 49).

Another saying constantly quoted in reference to marriage is:—*Orang semenda bertempat semenda*—"The married man is subservient to his wife's relations.—" This is not only a statement of the rule that on marriage the man passes into the wife's tribe but also an expression of fact of great practical importance to those called upon to adjudicate in disputes, as well as to the parties in their homes; the effect of this rule is illustrated by the case of Amun and Somah reported at page 69. The *waris* of a man have no financial responsibility towards him while he is married (*Seman v. Lehar*, p. 174).

If a husband fails to support his wife her remedy is to sue for maintenance (*nafkah*) in the *Kathi's* Court; the rate is fixed by convention at \$6 a month irrespective of the means of the parties or the number of children of the marriage. This amount may seem small but it is not unreasonable when considered in conjunction with a system which vests so much of the property, and particularly the *sawah* and *kampung* land, in the women.

#### Charian laki-bini.

As the object of every marriage is to continue the tribe, the married pair have an ethical responsibility to provide for their issue and consequently all property acquired during married life is the joint property of the pair; this rule applies even to land situated in a state where the matriarchal law does not apply (*Sadiah v. Siakim and Hassan*, p. 65 and *supra* p. 9, 10); there is a presumption that joint property was acquired for the benefit of the children of the marriage. It is the duty of a married man to build a house for his wife and her issue, and the site is usually on her ancestral land, (*In re the marriage of Amun and Somah*, p. 69).

There can be no gifts between husband and wife (*Nyai Ampar v. Impam and Langkar*, p. 67); neither can alienate without the consent of the other, and the two together cannot alienate without the consent of the issue, if adult. They have no power to make an agreement to vary the succession (*Hassan v. Romit*, p. 63). The joint property, however, is not ordinarily entailed and other members of the tribe have not, except in the case of *tanah tebus*, any right to options over it; land in this category, therefore, ought not to be made subject to customary limitations but, to protect the wife and children, the wife should always be registered as co-owner; she can claim to be so registered at any time (*Minah v. Mat Dahan*, p. 99).

If, however, the woman has no ancestral *kampung* and *sawah* or if she has not enough for her daughters, she and her husband usually set out to supply the deficiency, either by developing new land or



by purchase; the former is called *buat pesaka*, which mean that they intend the property to entailed *ab initio* in the wife's family and tribe, and it should be registered accordingly; in the latter case the rules of *tanah tebus* necessarily operate to protect the entail.

The debts of the married pair are, like the funeral expenses, a first charge on the joint property (*Re Dahil dec.* p. 113, *Kassim v. Amun*, p. 160).

### Divorce.

Divorce in Rembau is necessarily of the same composite nature as marriage. The forms are Muhammadan, the validity depends on registration, and the questions of property are governed by the *adat*.

Three rules are common to all kinds of divorce. Firstly, the religious law requires the woman to observe *edah*, a period of purification, normally one hundred days, and in every case this period runs from the date of the *Kathi's* certificate even though the husband has already been absent for many months; secondly, the *adat* confers on the woman in every case an absolute right and duty to take the custody of all the children, both sons and daughters, because they are of her tribe; thirdly, on completion of divorce, the man invariably returns to his own tribe and family until he marries again.

Divorce at the instance of the husband, or with his consent, is effected simply by the man pronouncing *talak* in the presence of two witnesses and leaving the house; if away from home he may give *talak* by letter to the wife or to her near male relatives (the *tempat semenda*). Such a divorce may be provisional—*satu talak*, or triple and irrevocable—*tiga talak*, and in either case it must be reported to the *Kathi* within seven days.

The certificate of registration of *satu talak* is equivalent to a decree *nisi*; the woman may claim division of the joint property forthwith but she does not ordinarily do so at this stage unless the man marries again. At any time within *edah* the husband may return to his wife on his own initiative or at her invitation; this is called *rojok* and must be registered by the *Kathi* within seven days. If the husband does not return the divorce automatically becomes absolute on completion of *edah* and the property should then be apportioned if this has not already been done. The woman is at liberty to marry another man at any time after *edah* unless she finds that she is *encie*, in which case she must wait until she has completed the period of purification following delivery, normally forty-four days; her former husband, however, may remarry her at any time but if he does so he must pay the *mas kawin* over again.

The certificate of registration of *tiga talak* amounts to a decree absolute in the first instance and the property must be apportioned forthwith; the husband has no right to return and if cohabitation

is resumed both parties commit a criminal offence unless the woman has been married to a different man and again divorced; her liberty to marry again is governed by the same considerations as in *satu talak*.

In either case she is entitled to maintenance during *edah* at the conventional rate (\$6 a month) and can sue for it in the *Kathi's* Court; if she proves to be pregnant this right continues until the child is born.

Divorce at the instance of the woman is of three kinds, *tebus talak*, *pasah nikah* and *talak gugor*. The ancient customary form of divorce called *beli laki* is obsolete; in any event it was only applicable where a man contracted a polygamous marriage and both wives lived in Rembau; even now such cases are very rare.

*Tebus talak*, divorce by redemption, is a divorce granted by the husband at the wife's request and in consideration of a sum of money paid to him by the wife; it is comparatively rare, only three or four cases occurring in Rembau in a year. The man must give *tiga talak* for if he returned, the whole proceeding would be stultified. The ordinary rules for distribution of property apply and the fee may be set off against any sum due from the husband on the general account; it appears that \$40 is considered a fair fee (*Siah v. Sitam*, p. 109). The *Kathi* of Rembau holds that the sum is limited to \$44 by the terms of his *kuasa* but this is an error due to confusion of thought—the clause in question refers to the repayment of *mas kawin*, which is quite distinct from the fee for *tebus talak*.

*Pasah nikah* is the relief given to a deserted wife; according to Parr & Mackray (at page 89) she is entitled to it for lack of conjugal rights, *nafkah batin*, even though she may have been provided with sufficient maintenance. The *Kathi*, however, denies this proposition and holds that the sole ground for *pasah* is lack of maintenance, and on proof thereof he will dissolve the marriage even though the husband may not have ceased to visit his wife for the purpose of conjugal relations. If the summons cannot be served on the husband the desertion must continue for at least six months. *Edah* runs from the date of the *Kathi's* certificate and on completion the woman is free to marry another man. Her former husband has no right of *rojok* and can only return if she consents to marry him *de novo*, in which case he must pay the *mas kawin* over again.

*Talak gugor* is available for the dissolution only of the special form of marriage called *nikah ta'alik*. At the celebration of such a marriage the bridegroom adds to the ordinary formula the words *jikalau aku meninggalkan isteri aku ka-darat enam bulan ka-laut sa-tahun, berpesan tidak, berita tidak, satu (or tiga) talak gugor sendiri*—"if I shall be absent from my wife for six months ashore or for a year over the sea, without being heard of or sending word, provisional (or irrevocable) divorce shall come to pass of itself."

This form is usually employed at the marriage of a Rembau woman to a man from another State and may also be used where the bridegroom is a local man. On proof that the clause was read and that the specified period has elapsed the *Kathi* will grant a certificate of provisional or absolute divorce in accordance with the stipulation. The rights of the parties as to return and remarriage are exactly the same as in normal case of divorce by *talak* but there is no division of property; any *harta pembawa* must be returned in the ordinary way but the woman is entitled to retain the whole of the *charian laki-bini* (*Pesah v. Dollah*, p. 119, *Mahawa v. Manan*, p. 111).

The distribution of property is usually arranged by the two families and their tribal elders or *lembagas*; if they are unable to settle the matter they resort to the Collector or Court. The particular rules are detailed in the next following section but it is proper to notice under the heading of "Divorce" that the *Kathi's* certificate is regarded as a bar to all further litigation between the parties, except claims for further maintenance in the event of the woman proving to be pregnant. There is a very salutary rule of practice which precludes the *Kathi* from issuing this certificate until he is satisfied that all questions of property have been adjusted, and if any such question has been taken to Court or to the Collector, the leave thereof is necessary. These matters are of great importance because the rights of third parties are sometimes involved and the rule itself is usually misunderstood.

As between the parties themselves there are two points. The object of the rule is to prevent them from making claims, as in *Rahim v. Sintah and Siti* (p. 114), long after the event when other interests may be affected; it does not, as they are apt to suppose, interfere with the execution of a decree or the enforcement of a claim which has been obtained or established at the time of divorce. Secondly, the issue of the certificate is necessary to enable the woman to marry again but not to enable the man to do so because the statute law, in conformity with the Muhammadan religion, recognises polygamy and makes polyandry a crime.

As regards third parties the point is that the joint assets of the married pair may include, e.g., the right to recover *charian laki-bini* money lent to strangers before the connubial dispute arose, and if any suit or application based on such a contract is imminent or pending it may be necessary to make an order for joinder or dismissal of parties, or payment into Court, or otherwise, so as to prevent the connected litigation from falling into utter confusion. Directions given in time frequently lead to settlement and the avoidance of unnecessary suits.

In most actions affecting *charian laki-bini* husband and wife ought to be joined and all such cases should be decided before completion of divorce; in the case of *talak gugor*, however, the certificate must be obtained first because it is only after divorce that

the woman is entitled to recover for her separate benefit (*Mahawa v. Manan* p. 111).

With regard to the statement that leave may be necessary for the issue of the *Kathi's* certificate it must be made clear that by the terms of his *kuasa* the *Kathi* is empowered and directed to refer such matters to the District Officer; the orders given are therefore not merely administrative but are made in exercise of an authority expressly conferred under the provisions of a Statute. The following cases illustrate various circumstances in which leave has been given and refused:—

Saudah	v. Siman.....	p. 104
Sawiah	v. Jadi.....	p. 106
Tiah	v. Ripin.....	p. 107
Siah	v. Sitam.....	p. 109
Mahawa	v. Manan.....	p. 111

### Distribution of property on dissolution of marriage.

In all cases of the dissolution of marriage not only the *charian laki-bini* but the whole of the property of both parties, moveable and immoveable, must be brought into account, irrespective of its origin and of the name in which land is registered (*Saleha and Habibah v. Amun*, p. 164). The following rules apply equally to divorce, *cherai hidup*, and dissolution by the death of either husband or wife, *cherai mati*; it will be understood that in the latter case the *waris* of the deceased succeed to his or her interests.

The property with which the marriage commenced must be restored or made good to the respective parties; *dapatan tinggal*—the wife's separate estate remains with her, and *pembawa kembalek*—the personal estate brought by the man returns to him.

The woman's ancestral property of course remains, the man having no further interest in it; he is not entitled to any compensation for agricultural or other improvements made during the marriage (*Niah v. Alias*, p. 81) and he must surrender the house, if on *dapatan* land, to the wife's tribe, no matter how great its value or how short the duration of the marriage (*Re Silong dec.*, *Ungkar v. Sichik*, p. 220).

It does occasionally happen, however, that the house is built on *charian laki-bini* land and there is some doubt as to whether in that case the same rule applies. On divorce the wife would clearly be entitled to the house but if she died without issue the land would remain to the husband and presumably the house with it. The difficulty is where the wife dies leaving issue and the widower contests the claim of her *waris*. Such cases arise from time to time

but the point has never been decided. Nyai Ampar's house (p. 67) was on land purchased from her family and Silong's (*supra*) on her own ancestral land. It appears, however, from the reasoning in the latter case that the *waris* of the wife would be entitled to retain a house on *charian* land on behalf of the issue before dividing the balance of the *charian laki-bini* with the widower.

The proceeds of the sale of a house on ancestral land rank as ancestral property (*Milah v. Shariff*, p. 182).

Any *dapatan* property, other than ancestral, remains with the tribe of the wife according to the same rule but the individual heirs are not necessarily the same; for instance any *charian laki-bini* of a former marriage is included in a woman's *harta dapatan* but on her death it descends to the son of that former marriage in preference to nieces, though the nieces obtain the ancestral in preference to that son (*Bidin v. Ibrahim*, p. 163). All property which the wife possessed before the marriage or obtained from her own family by gift or inheritance during the marriage, ranks as *dapatan* (*Re Haji Norijah dec.*, p. 76, *Re Puan dec.*, p. 153, *Rembut v. Amun*, p. 158, *Saudah v. Siman*, p. 104).

Neither *pembawa* nor *dapatan* can be extinguished; if the original property has been lost it must be made good by substituting property of equivalent value out of that obtained during the marriage, and the parties are entitled to follow their respective assets where these have been changed in form—thus, where *pembawa* buffaloes were sold and land was bought with the proceeds, it was held that the land was *pembawa* (*Miah v. Sajar*, p. 79), and where jewellery was sold and other jewellery bought in lieu, the substituted articles were held to be *dapatan* (*Tiah v. Ripin*, p. 107). If the husband has squandered the *harta dapatan* the wife or her *waris* may, on dissolution, recover it in a civil action irrespective of whether she consented at the time; the husband is deemed to be in a fiduciary capacity as regards the *dapatan* and during coverture the wife's consent is not free and cannot be given so as to prejudice the rights of her tribe.

In the same way all property brought by the man must be returned, whether he possessed it before the marriage as in *Tiano v. Si-Alus* (p. 71) or inherited it during the marriage as in *Re Amat bin Yim dec.* (p. 144) or obtained it during the marriage by way of gift as in *Re Ripin dec.* (p. 77). This rule however is to be construed very strictly, and if the *pembawa* has been materially increased in value by the joint efforts of husband and wife the increase, which is termed *untong*, ranks as *charian laki-bini* and must be apportioned accordingly (*Napsiah v. Samat*, p. 83). The words "by the joint efforts" require some qualification; they do not throw on the wife the onus of proving affirmatively that she actually worked on the specific land in respect of which she claims, as does the rule for a Selangor wife claiming *upah* (*Haji Ramah v.*

*Alpha*. IV F.M.S. Rep. 179); it is sufficient for the Rembau wife to show that the value was enhanced while the property was "in her hands," as the expression runs. *Upah* means "remuneration for work done"; *untong* means "profit"; the Selangor woman claims under the Muhammadan Law (or more probably under a local modification of that law) which regards her position as analogous to that of a servant whereas the Rembau woman claims her share in the profits of a partnership; similar facts give rise to both claims but, as the terms show, the legal concepts to which the facts must be applied are entirely different. *Chari*, however, is an active verb and where the pair had merely brought into bearing rubber which was nearly mature it was held that the surviving wife was not entitled to any share (*Singah v. Sa'abah*, p. 87). It is almost certain that where *pembawa* buffaloes have natural increase during a marriage such increase ranks as *charian laki-bini*; there is no case on this particular point but the proposition seems to follow inevitably from *Limah v. Lateh* (p. 88) where it was held that the increase of *dapatan* buffaloes ranks as *charian*; moreover the *untong bagi dua* agreement, which is equally common in Rembau and in other parts of the Peninsula, shews that such increase does not take place without work worthy of remuneration.

It is quite certain that a man has no claim to compensation for any improvements made by him to his wife's ancestral property but it has been stated that the doctrine of *untong* does apply to *dapatan* which is "new land", i.e., land taken up by the wife prior to the marriage either alone or with a previous husband and of which, therefore, she was a first owner (see *Bidin v. Ibrahim*, p. 163); there is, however, no case in which a share in such *dapatan* has actually been awarded to a husband. It seems that this principle of *untong* is a modern development of the *adat*; there is no record of it ever having been applied to land other than rubber land. To put an imaginary case—as to which there is nothing far fetched or improbable—a woman on divorce receives (as did Saudah) one lot of new land, still under jungle; she marries a man who possesses a similar *pembawa* lot and they jointly develop both; ten years later they are divorced. It would be manifestly unjust to award a share in the *pembawa* lot to the woman, and at the same time deny a share in the *dapatan* lot to the man. It is therefore submitted that if a clear case for it was made out on the facts the Collector would be within the *adat* in extending the rule of *untong* to *hartaapatan* in new land, while still maintaining the ancient rule that there is no *untong* in ancestral land. This view is supported by the recent case *Limah v. Lateh* (p. 88) where it was proved that the principle of *untong* applies to *dapatan* cattle.

In cases where allowance is to be made for *untong* the shares are usually assessed by the tribal authorities; only in case of failure to arrive at a settlement do they resort to the Collector or Court. Land may be subdivided, or one side may buy out the other in

cash, or some other item of joint property may be set off against the *untong*.

In all cases the onus of proving *untong* is on the person who claims it—a rule of *adat* which happily accords with the English rule of evidence.

*Untong*, in this connection, means increase in capital value and must be distinguished from produce. Articles bought out of the produce of *dapatan* land are themselves *harta dapatan*, (*P. P. v. Tahir*, p. 103. *Re Leha dec.* p. 240).

Those possessions which are not in their nature divisible must be allotted to the respective parties—thus the husband is entitled to retain his personal belongings, clothes and ornaments, and the wife her jewellery. It is sometimes said that weapons and jewellery are not subject to the rule *chari bahagi*, but the cases do not support this view. The exception may apply to articles of no appreciable value (*c. f.* Parr and Mackray, at page 88) but weapons and jewellery of substantial value, since they cannot literally be divided, are to be set off one against the other or against other property, (*Saudah v. Siman*, p. 104, *Saleha and Habibah v. Amun*, p. 164). There is definite evidence that guns follow the ordinary rule, *Re Kulop Kidal dec.*, p. 93).

There are, however, two classes of property which may be regarded as exceptions to the ordinary rules for distribution of *charian laki-bini*—ancestral land which has been purchased in exercise of the customary option with *charian laki-bini* money, and *charian laki-bini* land which is *kampung*, *sawah*, or *dusun*; the first of these will be considered under the heading *tanah tebus*; (p. 36) the second are in their nature peculiarly the property of women and it is probable that on divorce the wife is entitled to retain the whole of such property instead of dividing it, at any rate if she has children. It is clear that on the death of the husband such property devolves on the widow and the female issue to the exclusion of sons (*Re Rahmat Pakeh dec.*, p. 126, *Re Haji Munap dec.*, p. 127), and that on the death of the wife the whole of it devolves on the female issue to the exclusion of the widower (*Temah v. Haji Zakaria*, p. 125).

The remainder of the property, together with any *untong*, is *charian laki-bini*; from this must be deducted the burial expenses in the case of *cherai mati*, and the debts of the partnership in all cases; the balance is apportionable between the parties but the *adat* prescribes different rules for the various circumstances in which the apportionment is made; briefly, these are as follows:—

- |                          |  |
|--------------------------|--|
| on divorce—              | the property is divided<br>between husband and wife; |
| on death of the husband— | the property remains to the<br>widow and issue;      |



on death of the wife— the property is divided between the widower and issue.

These rules will be discussed fully in the next following sections but first it must be made clear that "issue" means "issue of the marriage during which the property was acquired"; the term may include both sons and daughters of that marriage, and it includes grand-daughters being the daughters of a deceased daughter of that marriage (*Re Kanda Maon dec.*, p. 141), but it does not include the daughter of the woman by a different husband (*Niah v. Alias*, p. 81) and *a fortiori* it does not include children of the man by a different wife who are usually of a different tribe altogether (yet even that may not prevent them from claiming, see for instance the claim of Kulop Kidal's daughter, at pages 89, 91).

These distinctions are of great importance because they apply to the devolution of *charian laki-bini* but not to that of other classes of property; *pesaka* descends to all the daughters equally (*Re Yasin dec.*, p. 198) and so does *charian janda* (*Re Sinding dec.*, p. 75) but, subject to the two exceptions stated at page 24 *supra*, the *charian* of a marriage descends to the issue of that marriage (*Re Pral dec.*, p. 128); it will be seen, however, that if a marriage was childless the *charian* of that marriage may in some cases devolve at a later stage on the daughters of the woman by a different husband. The question is:— "Which of the acquiring partners died first?" If the marriage was childless, then on the death of either party the joint property remains to the survivor, and on his or her death it reverts to the tribe of the survivor.

The difficulty arises in practice largely because property may devolve in fact, without any legal proceedings; in *Senai v. Kesah* for instance (p. 120) the land in dispute was *charian laki-bini*; the husband died first and the land remained to the wife, but she took no steps to obtain transmission and shortly afterwards died; consequently the deceased technically in question was the husband, his name being on the register, but the deceased substantially in question was the wife, because it was on the fact of her death that the question at issue depended.

The incidence and effect of these distinctions will be fully appreciated on careful study and comparison of the various cases cited and the notes on them; the appeal in *Niah v. Alias* (p. 81) shows the error that may result from failure to perceive the ambiguity of the word "issue."

### Apportionment on Divorce.

The rule on divorce is *charian bahagi*; the apportionable property is divided equally between husband and wife, irrespective of who is to blame for the divorce, irrespective even of the wife's adultery (case cited in Parr and Mackray at p. 91), and irrespective of the number of children (*Abdullah v. Awa* p. 118).



The wife's share thereupon becomes entailed and should be registered accordingly forthwith. As to the husband's share there is some doubt; it was definitely held by the Resident in *Re Kulop Kidal dec.* (p. 90) that after the death of the wife the husband's share was held on behalf of his tribe, and there does not seem to be any reason for distinguishing in this respect between death and divorce; it is therefore submitted that the man's share also becomes entailed in his tribe.

The debts, like the assets, must be equally shared (*Tiah v. Ripin*, p. 107, *Siah v. Sitam*, p. 109).

To the rule of equal division on divorce there is one established exception; in the case of operation of the saving clause in *nikah ta'alik* the wife retains the whole of the property.

There is this further exception that the husband has power to grant as much as he pleases of his own share to the issue, or to the wife as their trustee if they are still children; this is called *tentukan* and is optional, the wife cannot claim more than half as of right; any excess is for the children only and should be protected by a caveat (*Pesah v. Dollah*, p. 119). In cases, however, where the marriage has subsisted for a long time and the issue are adult, they can claim *tentukan* of a reasonable proportion of the property and the balance only is divided equally between husband and wife, (*Ujang v. Bujok*, p. 116).

As the husband can divorce his wife at will he is in practice required to do so before enforcing division (*Ujang v. Bujok, supra*), but since the wife cannot ordinarily obtain divorce unless her husband consent to set her free she is entitled to claim registration of half of the joint property in her own name irrespective of divorce—otherwise “unscrupulous husbands could reduce the *adat* of *charian* to a farce by selling whenever and to whomever they please, without reference to their wives” (*Minah v. Mat Dahan*, p. 99). This rule is of course of still greater moment in cases where there are children.

It is of the utmost importance that any claim for partition be made at the time of divorce; relief can be given then, but not afterwards (*Rahim v. Sintah and Siti*, p. 114). If, however, a claim be made and admitted, but not satisfied, equity will intervene to enforce the agreement (*Si-Alang v. Samat*, p. 115). The distinction between these two cases should be carefully noted.

### Apportionment on the Death of the Husband.

On the death of a man in wedlock the rule is *mati laki tinggal ka-bini*. Since he died “in his wife's hands” she alone is responsible for his funeral and his *waris* can recover nothing but the *pembawa*; the rest of the property remains with the widow—if childless, for her own benefit and if there is issue, for the benefit

of the issue, and in either case it becomes entailed (*Re Lamit dec.*, p. 122, *Meriam v. Timah*, p. 123) and land should therefore be registered as "customary" on transmission. If the children are small a caveat should be entered to protect their reversion; if the issue are adult the property may, with the consent of the widow, be transmitted to them direct (*Re Si-Abu dec.*, p. 124, *Re Amat bin Yim dec.*, p. 144).

"Issue," for this purpose, does not mean female issue only; rubber land, money and moveables generally, descend to sons and daughters in equal shares *per capita*, the sons shares in due course reverting to their sisters (*Re Pral dec.* p. 128, *Re Ma'amin dec.* p. 145, *Re Kahar dec.* p. 129) but *kampong*, *sawah* and *dusun* are exclusively for daughters (*Re Rahmat Pakeh dec.* p. 126, *Re Haji Munap dec.* p. 127). As explained above (at page 25) "issue" means "issue of the marriage of acquisition."

On the subsequent death of the woman this property descends to the issue, if any, of the marriage of acquisition (*Re Pral dec.*, p. 128 *Bidin v. Ibrahim*, p. 163) and failing such issue to the daughters, if any, of the woman by other husbands (*Senai v. Kesah*, p. 120, *Re Haji Munap dec.*, p. 127) and failing them to the *waris* of the woman.

#### Apportionment on the Death of the Wife.

On the death of a wife the applicable rule is *mati bini tinggal ka-laki kalau tiada anak antara ber-dua nya*. If she leaves no issue the fundamental purpose of the union has been frustrated by nature; her tribe recover her *dapatan* but they have no liabilities in respect of her and therefore no claim to her married earnings. Her widower pays the funeral expenses and debts and retains the whole of the joint property for himself (*Niah v. Alias*, p. 81) and it thereupon becomes entailed in his tribe (*Re Kulop Kidal dec.* p. 89).

If on the other hand the wife leaves issue they have a right to maintenance and the rule *tinggal ka-laki* does not apply. The property must be divided between the widower and the issue but there is no fixed or terse rule as to the proportions. The shares are decided by the judgment, *timbangan*, of the two families and their tribal chiefs when they meet at the hundredth day feast. On that occasion the burial expenses and debts are formally declared and proved; the *pembawa* and *dapatan* are accounted for and restored, and the widower is then *jeput*, i.e., formally invited to return to his own tribe.

If the two families cannot agree on the division, or if the award of the elders is not made effective, a fresh division may be made later by the Collector or Court but it should be made with regard to the family and the property as they were on the hundredth day. If a child of the marriage was then alive, its subsequent death makes

no difference and the *waris* are entitled to inherit the child's share (*Re Si-Alus dec.*, p. 138).

The principle of the division is to make fair provision for the issue. If there is but little property, say one lot of land, the whole may be awarded to the *waris* as trustees for the issue, (*Taib v. Uchang*, p. 135, *Re Kering dec.* p. 136) but where the property is more extensive the widower is entitled to a share. He may, with their consent or that if their *waris* if they are not of age, expressly allocate (*tentukan*) particular property to the issue and if they are adult their shares may be transmitted to them forthwith (*Re Inap dec.* p. 140). In any event the property becomes entailed on transmission to the children or their trustees and land should thereupon be registered as "customary". Sons and daughters are equally entitled to inherit rubber land and moveable property (*Re Puan dec.* pp. 164, 167) but daughters have an exclusive right to *kampung*, *sawah* and *dusun* (*Temah v. Haji Zakaria*, p. 125, *Re Rahmat Pakeh dec.*, p. 126, *Re Haji Munap dec.*, p. 127). Subject to this exception the widower may retain any portion not exceeding one-half of the joint property as his *kepan*; it is not limited to the amount strictly necessary to cover his funeral expenses—indeed it may be considerably more—but it is usually called his *kepan*.

If the property has once been divided the children have no further claim, and the *waris* of the man are entitled to inherit the whole of his share, if his funeral expenses are eventually paid either by them or by a subsequent wife.

An infant cannot renounce his rights and no one is competent to renounce them for him; a purported *pakat*, therefore, should always be jealously scrutinised to ensure that no minor is awarded less than his or her proper share.

It occasionally happens, however, that where the issue are adult the widower prefers to continue to live with them rather than return to his own family; in such a case the property is not divided but is held by the man in trust for the issue; it is then called *harta terbawa* and if the issue eventually pay the man's funeral expenses they inherit the whole of the property and his *waris* are barred (*Re Kahar dec.* p. 129); similarly if a subsequent wife pays the funeral expenses out of the *charian* of her marriage (as she is bound to do), the issue of the marriage during which the property was acquired inherit the whole, and the man's *waris* are barred (*Re Badoh dec.*, p. 150).

In no case can the widower be the guardian of his young children; they must remain in the custody of their own tribe. This rule is of the greatest importance and to neglect it is to ignore the first duty of a Court which is to safeguard the interests of infants. Disregard of this fundamental principle has been the direct cause of the bitterest and most protracted litigation—see for example

*Re Puan dec.* (p. 149 *et seq.*) *Ungkar v. Sichik*, (p. 220) and *Re Munap and Salleh*, (p. 133). It is therefore laid down as an absolutely inflexible rule that the proper guardian of an infant is the nearest competent female relative in the tribe of the infant's mother, and that such person must be registered as trustee of any land devolving on the infant under a caveat specifying the name of the *cestui que trust* and where there are several, specifying all their names and their shares. There is no case on record in which the *waris* have declined to undertake the care of the infants, and if by any chance they do not come forward they should be called upon to do so (*Re Embam dec.*, p. 137). A widower, anxious to obtain the property, may promise to maintain the children but in practice he never does so; he is almost certain to remarry and to allow his application is only to promote friction and litigation between two or even three tribes.

There is a beneficent rule of the *adat* designed to overcome this difficulty; as an exception to the rule forbidding a man to remarry forthwith into his deceased wife's tribe he is allowed to marry her sister; this is called *ganti tikar*. In Naning it is limited to a younger sister but in Rembau it is permitted with either an elder or a younger.

Marriage by *ganti tikar* may take place either before or after the hundred days but, as the affiliation of the man to the woman's tribe is not interrupted, he is insusceptible of *jeput* and division of the property is unnecessary. If the families are sufficiently friendly for the second marriage to take place they will obviously be able to arrange their finances amicably. The sister of the deceased, as *waris* of the children, has an absolute right to the custody of the children and to hold their property as trustee, whether she marries their father or not. If she does so, however, a dispute may easily arise on dissolution of this second marriage; there is no case on the point but it is submitted that the property of the first marriage should be divided, so far as possible, with regard to the state of affairs at the death of the first wife, (on the same principle as was applied in the slightly different circumstances of *Re Si-Alus dec.*, p. 138).

A widower may marry a second wife of a different tribe and after dissolution of that marriage he may marry a sister of his first wife; this is perfectly regular but it is not described as *ganti tikar*.

### Summary.

The rules for distribution of acquired property may now be summarised; it will be understood that some of the exceptions are omitted here.

- (1) *Charian bujang*, of either sex, reverts on death to the *waris* of the deceased.

## (2) On the dissolution of any marriage:—

- (a) *pembawa kembalek*—the personal estate of the husband is returned to him, or his tribe, but subject to *untong*;
- (b) *dapatan tinggal*—the separate estate of the wife remains with her, or her tribe;
- (c) funeral expenses and debts are chargeable on the *charian laki-bini*.

(3) The balance of the *charian laki-bini* is apportioned thus:—

- (a) on divorce it is divided equally, subject to the power to *tentukan*, and except in *talak gugor*;
- (b) on the death of either without issue of the marriage—the whole remains to the survivor;
- (c) on the death of the husband leaving issue—the whole remains to the widow and issue;
- (d) on the death of the wife leaving issue—it is divided, not necessarily equally.

### Chapter III.

## ANCESTRAL PROPERTY.

### Ancestral Property Generally.

All ancestral property belongs to the tribe; it vests in the female members but they hold it as trustees for their tribe rather than as owners; the practice of registering them as the holders of tribal land has most unfortunately obscured to a great extent the true nature of their tenure, which is fundamentally different from the conception of ownership ordinarily implied in tenure by statutory title but yet is not so strictly vicarious as that of a trustee in the English sense of the word.

The first duty of a holder of ancestral property is to conserve it in and for the tribe (*Timah v. Taib*, p. 175); consequently if she abandons it her *waris* are entitled to take possession of it on behalf of the tribe but they must also accept any liabilities properly chargeable on the property, (*Siah v. Sipit*, p. 172) and conversely, if an absent member of the tribe returns to live permanently in Rembau she may recover her proper share from her sister (*Bedah v. Nemah*, p. 173).

The holder of ancestral property has some financial responsibilities towards the male members of the family except while they are married (*Seman v. Lehar*, p. 174); she is bound to furnish the customary fees payable by them on marriage, and on dissolution she must receive and cherish them until they marry again; if they die unmarried she must provide the customary funeral feasts. These duties are, of course, the natural counterpart of her right to inherit their property.

The *waris* are also responsible for some of the debts which the unmarried men of the family may incur; according to Parr and Mackray (at p. 72) this liability extends not only to gambling and other private debts but also to customary debts; according to an undated document, the origin of which cannot be traced but which was considered authoritative in 1904, it covers customary debts only (D.O.R. 28/26); it may cover a fine (*Tiawa v. Bolok*, p. 191, but the record does not shew whether the fine in question was a "customary" one or not); the current expression *hutang tumbok*, literally, "a debt which sprung up," seems to imply that the *waris* are responsible only for debts due to inevitable misfortune. The existence of this liability was established by the leading case *Bimbang v. Tiambi*, (p. 57) but its extent has never been determined; it is submitted that there is no rule and that the questions whether, and to what extent, the *waris* are bound to settle an unmarried man's debts are matters for the discretion of the *ibu-bapa* of the *kampung* concerned; if public opinion holds the man justified in his action,

then his family must assist him in proportion to their means, but if he is in fault they are excused. In some cases, of course, *kampung* opinion might easily hold the family liable under circumstances in which neither the Civil Court nor the Collector would enforce the claim.

The holder of ancestral property cannot dispose of it at will (*Inah v. Echik*, p. 176, *Si-Alus v. Inoh*, p. 177, *Samat v. Supau* p. 178) but she may sell or encumber it if necessary for the discharge of her customary duties or to raise funds for pilgrimage to Mecca; even for the latter purpose, however, she cannot dispose of the whole lest on return she become a burden to her family; she cannot, in short, be pious at their expense but must reserve sufficient land to provide for her own maintenance and funeral (*Tiahad v. Derai*, p. 180, *Bulat* of 1927, p. 214). Except on adoption she cannot convey any portion of her holding by way of gift so as to disturb the distribution within the family (*Siti v. Siaman*, p. 195) and *a fortiori* she cannot give away property outside the family.

In no case can a holder who has a direct heiress, *i.e.*, a daughter or granddaughter, dispose of ancestral property, even to another member of the family, without the consent of the heiress or, where there are several with equal rights, of all the heiresses (*Ijah v. Sa-Elah*, p. 179, *Meriam v. Timah*, p. 123). Indirect heiresses, however, cannot prevent disposal of the property; they have only an option to take it up in preference to more remote relatives (*Bidah v. Peah*, p. 187).

The rule that ancestral property cannot be sold or charged except for a customary purpose may definitely conflict with the rule that indirect heiresses have only an option and cannot prevent disposal. If a holder who has no direct heiress wishes to dispose of her holding and the family object to the whole transaction instead of merely exercising their option, it is clear that these two rules cannot be reconciled and it becomes necessary to consider which of them is to prevail. This point has arisen several times but it has never been the main issue and consequently it has never been decided. Having regard to all the cases which bear on the subject it is submitted that the question is one for the discretion primarily of the *lembaga* and ultimately of the Resident and *Undang*. The considerations affecting the matter include distribution, situation, maintenance and nearness of kin. As to distribution, regard must be had to the whole of the family for many a woman is the nominal holder of more than her own share of the ancestral property and obviously she must not dispose of anything which she holds subject to an actual, though probably unregistered, trust. (This illustrates the doctrine, expounded at page 10, that the words "Customary Land," on a title, are equivalent to a caveat, for the caveat is the proper instrument for the protection of trusts under a system of land registration). As to situation, where a family occupies



contiguous holdings no portion should be sold outside the family (*Timah v. Taib*, p. 175, *Inah v. Echik*, p. 176). As to maintenance, the same rule applies as in sale for pilgrimage; the holder must retain sufficient property for her own maintenance; she must not squander her inheritance and then turn to her family for support, like the prodigal son. As regards nearness of kin, if the nearest relatives raise no objection to a transaction those less closely related cannot prevent it, though they still have their options, (*Bedah v. Peah*, p. 187), and probably a sister or niece might maintain an objection which would not be upheld if made by a second or third cousin; a sister, however, is not a direct heiress and has not the same right as a daughter to prevent disposal of property.

It is probable that in ancient times the sale of ancestral property was absolutely prohibited, as jeopardising the preservation of the tribe, and that this rule has been progressively relaxed as the struggle for existence has become less severe. The modern tendency is to favour liberty of dealing and the peremptory right to forbid a transaction is gradually giving place to the principle that near relatives can prevent improvident disposal; nevertheless the rights of the family and tribe to their options are always rigorously enforced.

### Options.

Before charging or transferring ancestral property to a stranger the holder is bound to grant an option to her family and the legislature has provided machinery to enforce this duty in respect of land by enacting that no dealing with any entailed land shall be valid unless the memorandum bears the written assent of the *lembaga* of the tribe, and in the case of transfer or charge to another tribe it is also necessary that a notice of the intended transaction should be published for a month to afford to all the members of the holder's tribe an adequate opportunity to exercise their options.

The rules as to these options are:—

- (a) near relatives have priority over distant relatives in order of their nearness which is, of course, determined by the same matriarchal rules as govern inheritance—thus the next heiress has the first option (*Kechik v. Samsiah*, p. 189);
- (b) members of the same *perut*, though too remote to inherit, have priority over members of other *perut*, (*Ijah v. Indam*, p. 190);
- (c) members of the tribe, even males, have priority over members of other tribes (*Tiawa v. Bolok*, p. 191) but a male member who is married belongs to the tribe of his wife and therefore does not rank as a member of



his mother's tribe for this purpose (*Repah v. Siah and Taib*, p. 185). In this respect the law is now more stringent than the custom since the Enactment of 1926 has rendered it impossible for such land to be transferred, or even charged, except to females. It is hoped that this undue restriction will be relaxed.

As regards price it is often stated (e.g., at p. 188) that near relatives are entitled to buy at a slightly lower price than strangers but this is a doubtful proposition for even a sister claiming the option has been required to pay the price offered by a buyer of another tribe (*Sihī v. Baiyah and Sipau*, p. 192); in that case, however, the price bid by the other tribe was materially less than the valuation of the land.

Disputes sometimes arise where the claimant of an option declares that the price stated in the notice is unfairly high or is fictitious and not genuinely intended to be paid. In such cases the correct course is to require the *lembaga* and *penghulu* to inspect the land, and then grant to the claimant an option to buy at a price assessed by the Collector (*Bador Samat v. Loyok and Ganda*, p. 193).

The rules as to price apply, *mutatis mutandis*, to the amount of a charge.

In the case of land which is not strictly ancestral, e.g., the share of *charian laki-bini* land which has been inherited by the husband on the death of the wife, the *waris* of the holder have an option but they must pay the full market price if they desire to exercise it. There is no case on this point but that is the opinion of the present *Undang* (D.O.R. 210/26).

The holder of ancestral property cannot surrender any of it to the State, even for religious purposes, without the consent of her tribe (*Ex parte Siambong*, p. 181).

### Devolution.

The rules as to devolution of ancestral property are simple in theory but, as the cases show, they are sometimes very difficult to apply in practice.

The basic principle is equal distribution to direct descendants *per stirpes* (*Re Silong dec.* p. 197) but it must always be remembered that the property belongs to the family, not to the individual, and it may be entirely wrong to say "this woman has two daughters—therefore they have half each and all others are barred." That rule applies only to the proper share of the proposita and if she was registered as the holder of all the land derived from her mother, and left one sister, the sister would be entitled to half and the two daughters only to one quarter each. The rule therefore

can only be stated in general terms, *viz.*, that all the ancestral property of the family is to be divided equally *per stirpes*, and transmission must always be ordered with due regard to any partial distribution which may already have been made (*Re Naisah dec.* p. 202, *Re Pisah binti Keledi dec.* p. 203). It is occasionally expedient to defer, or even to delegate, the task of distribution, but care should be taken that every branch of the family is protected (*Re Tiamin dec.* p. 206, *Re Si-Ambok and Patin dec.* p. 207).

If any heiress is an infant her share must be transmitted to her *waris* as trustee under the usual caveat (*Re Silong dec.*, *Ungkar v. Sichik*, p. 220); there is no distinction in this respect between ancestral and acquired property, and the considerations stated in chapter II (pp. 28, 29) apply with equal, if not greater, force.

The share of a deceased potential heiress passes intact to her descendants (*Imat v. Relip*, p. 208) and there is no limit to the right of inheritance in the direct line; if all intervening generations are extinguished an infant may be entitled to succeed to her great-great-grandmother, or great-great-grand-aunt, (*Re Lipor dec.* p. 209) and if such a descendant dies without issue her property reverts in the opposite sense to ascendants. (*Re Pesah dec.* p. 211, *Re Siwok dec.* p. 212). There is, however, a definite limit to the right of collateral relatives; *sanak nenek* may succeed if they can fully prove their claim (*Bulat* of 1927, p. 214); failing that the inheritance becomes *pesaka gantong* and is auctioned among the tribe, the proceeds, after deduction of debts and funeral expenses, are paid to the male heirs, if any, who might otherwise have held a life-interest and failing them are escheat to the State.

It is important that each branch of the family should have a proper share of both *kampung* and *sawah* but it is not necessary that exact mathematical shares should be registered and where the shares become very small the Collector has a discretion to award specific lots to particular claimants so that each will have a substantially fair share of both *kampung* and *sawah* in her own control (*Re Sa-Erah dec.* p. 217).

The greatest difficulties occur where a *perut* in the family is extinguished; in such a case the share of the *perut* must be distributed over the other *perut*, so as to give each a proper share of all the property descending from their common ancestress. The working of this principle will be understood from the typical cases reported on pages 201, *et seq.*; closely bound up with it is the rule that "the nearer exclude the more remote," which raises the question—"But according to *adat* who are the nearer"? This question was very fully considered by the Resident and the *Undang* in *Re Siti Ensah dec.* (*q.v.* at p. 199). The rule is that all persons having the same common ancestress are equally "near".

There are several circumstances which call for variations from the general rule. Firstly, if a definite allocation of *kepan* has been made the property so allotted passes to those relatives who paid the funeral expenses and the balance only is distributed (*Re Mint dec.* p. 219). If no definite allocation was made but still the burial expenses were chargeable on the ancestral property, the person who paid them is entitled to an extra share equivalent to the amount of reasonable funeral expenses (*Re Sa-Erah dec.* p. 217). Secondly, a variation may be made in favour of the relative who maintained the male children of the deceased. (*Re Monit dec.* p. 223). Thirdly, the son, or failing sons the brothers, of a deceased who left no direct heiress may be allowed to hold a life-interest with remainder to the female relatives who would otherwise have succeeded. The rights of life-occupants are limited to enjoyment; they have no disposing power and their responsibilities vis-a-vis the heiresses in remainder are clearly defined by the Statute. An infant may be registered as a life occupant and no caveat is necessary (*Re Munah dec.* p. 227).

The power to grant a life-interest is discretionary; there is no absolute right to it. Potential life-occupants may be disqualified by their conduct or by non-residence (*Re Nyonya dec.* p. 224); and they may be restrained from interfering with the holder's enjoyment of the property (*Sahara v. Abas*, p. 228); they need not necessarily be granted an interest in the whole of the estate, and where the *waris* are closely related no life-interest will ordinarily be granted (*Re Siti dec.* p. 226).

Departure from the strict rules by agreement among the heiresses is permitted only within narrow limits and the cases where nearer relatives purport to waive their claims in favour of those more remote should be closely scrutinised; as a rule they will be found on examination to be in truth not variations, but illustrations of the principle that *kampung* and *sawah* must be fairly distributed over all the *perut* in the family.

An heiress to ancestral land has in general no power to waive in favour of a more remote relative than herself (*Re Itam dec.* p. 229, *Re Piah dec.* p. 230) but to this there are two exceptions. Firstly, an elderly woman with no daughter, if she has enough property for her own maintenance, usually waives in favour of the nearest heiress who has a daughter; this is in accordance with the fundamental principles of tribal property. Secondly, the nearest heiress may allow a share to a more remote relative who has cherished the deceased provided that all the nearer relatives consent (*Re Nyonya dec.* p. 224).

### **Tanah tebus.**

Historically, *tanah tebus* means tribal land as distinct from *waris* land; it is land which was deemed to have been purchased by

the immigrant tribes from the original inhabitants (the *waris*, see p. 6 and p. 277) and which was therefore held in perpetuity by the tribe, and on which no tax or tribute was payable by the occupants; all such land was held subject to options. Members of the tribes who settled on unredeemed lands did not hold in perpetuity but only for life and were liable to pay an annual rent in kind to the *Undang*; in practice, however, the descendants of such deceased occupants were usually allowed to remain in possession and the land become entailed in their families according to ancestral rules. By bringing all these holdings on to the same register the British Administration in effect abolished the distinction, and it has been well recognised for many years that all lands the titles to which are derived from the Old Titles—the tribal register commenced in 1888—are subject to ancestral rules of inheritance and to options, though in a few cases such titles were issued for what was then new land.

Any such land which has been purchased in exercise of an option, or failing exercise, by another tribe, may be described as *tanah tebus* which has thus become an ambiguous term. It is not possible to make out whether the expression *tanah tebus* is intended to be understood literally or historically, especially since the expression will only be used when the land is in the literal sense *tanah tebus*, whether it is also historically *tanah tebus* or not. It is obvious that illiterate persons will not usually be able to appreciate the distinction, which is so thoroughly concealed by the ambiguity of the only possible phrase in the only language they understand, and it seems therefore that the distinction must for practical purposes be taken to have died a natural death. For want of any other term *tanah tebus* will hereinafter be used in the wider or modern sense of any ancestral land which has been sold subject to, or in exercise of, options.

It is quite clear that all *tanah tebus* continues to be subject to options after purchase (*Sinoi v. Dinak*, p. 188). The question which has arisen several times, but has never been understood and therefore never decided, is this:—"Is *tanah tebus*, after purchase, the acquired property of the purchaser or not?"

It is submitted that if, failing exercise of the option by the first in priority, such land be transferred to a person other than the immediate heiress, whether in the same tribe or not, the land becomes, for the purposes of inheritance, acquired property of the purchaser, though it continues to be subject to options in the case the purchaser desire to resell. This means that if man and wife buy ancestral land from a stranger, or even from a remote relative of the wife, the land becomes their *charian laki-bini*, and failing issue it will, on the death of the wife, remain to the widower with reversion to his *waris* whereupon it will become ancestral property of his tribe, but at all times

should the holder desire to sell, the customary options must be granted.

On the other hand, if such land is transferred in exercise of the option to the immediate heiress for valuable consideration, even though the amount be a fair market value of the land, then it is submitted that the entail is not broken and that such land would devolve not as *charian*, but as ancestral land on the immediate heiress of the transferee, but the widower of the purchaser may be entitled to reimbursement by the heiress-in-tail of the exact amount of *wang charian* expended and without any allowance for improvements (*Nyai-Ampar v. Impam and Langkar*, p. 67).

The reason for this is that the land clearly belongs to the wife's tribe throughout and therefore though the husband may, if childless, have a right to the actual *charian* he can have no interest in the land except while he is affiliated to her tribe, and on return to his own tribe he must relinquish the land itself; he is, in fact, in the position of an encumbrancer rather than in that of a holder of any estate in the land.

Such land must at all times continue to be subject to options, in the event of the transferee desiring to charge or re-sell.

## Chapter IV. ADOPTION.

### Adoption Generally.

This is a very complex and confused branch of the custom; there are several degrees of adoption which confer different rights on the person adopted and frequently lead to disputes and litigation. The terms used present an extraordinary degree of vagueness and ambiguity, giving rise to much conflict in evidence and making it extremely difficult even for the most experienced officers to reach satisfactory conclusions.

As in all other matters the fundamental principle is that the tribe, not the family, is the social unit and the main issue is generally "Did the alleged adoption operate to make the adopted person a member of the tribe?" Adoption may, however, take place within the tribe in which case the issue narrows down to the question ".Was there a valid adoption?"

Two general rules can be definitely stated:—

- I. The degree of adoption is determined by the status of the adoptee before adoption, and the ceremonies actually performed, and
- II. A fully adopted child has all the rights and responsibilities of a natural child.

Correctness of ceremonial is essential to validity and, no matter what the intentions of the parties may have been, the rights conferred on the adoptee are those and those only of the degree of adoption to which, having regard to the original status of the adoptee, the ceremonies actually performed were appropriate. A defect, however, may in some cases be remedied by performing a further ceremony but this does not operate to antedate the adoption. Adoption speaks from the date of the perfecting ceremony and does not affect any rights which may have accrued to third parties before that date (*Re Timah dec.*, p. 233).

Adoption once performed is irrevocable (*Sapiah v. Sintan*, p. 237).

On completion of the ceremony necessary for a full adoption the adoptee assumes all the rights and liabilities of a natural child, both direct and collateral, and becomes entitled to inherit all property, of whatever kind, to which a natural child would succeed and, in the case of acquired property, irrespective of whether it was acquired before or after the date of adoption; if a deceased leaves both natural and fully adopted relatives they succeed *pari passu* on division according to the ordinary rules. A fully adopted daughter becomes the sister and *waris* of her adoptive mother's sons;

she must cherish them whenever they are unmarried (*Seman v. Lehar*, p. 174), and is heiress to their *harta pembawa* (*Re Abdul Hamid dec.*, p. 86). If an adopted daughter already has children they become the grand-children and heiresses of the adoptive parent, even if the adoptee die first (*Re Kepam dec.*, p. 252).

### The Parties to Adoption.

From the tribal rule it necessarily follows that only a woman can adopt a child; her husband may be the prime mover but on dissolution of the marriage the adopted child remains with her or her *waris* in accordance with the second rule. A man therefore can only be said to adopt a child in the sense that he arranges for, or agrees to, the adoption of the child by his wife; an unmarried man cannot adopt a child at all but a man, whether married or not, can adopt a woman as his sister; this is rare but it is definitely established (*Re Timah dec.*, p. 233).

The person adopted, however, may be either a male or a female, and either a child or an adult, and further, the person adopted may be a member of the adopting family, a member of the same *perut* (using *perut* in the wider sense, i.e., a division of a tribe) a member of another *perut* but of the same tribe, a member of a different tribe, a foreign Malay, or even a person of another race (*Re Siadus dec.*, p. 239); for the purpose of adoption a member of the same tribe, but of a different *luak* (e.g., Naning), ranks as a foreign Malay (*Re Leha dec.*, p. 240), and the cases may therefore be classified in three groups according to whether the person to be adopted is:—

- (1) a member of the adopting *perut*
- or (2) a member of the adopting tribe, but of a different *perut*
- or (3) a person outside the tribe.

### Degrees of Adoption.

Each of these groups may be further subdivided into cases of:—

- (a) Full adoption,
- (b) Limited adoption,
- (c) Pseudo adoption,

according to the ceremony, if any, actually performed. These terms are necessarily new, this being the first occasion on which a comprehensive account of the subject has been attempted. "Full adoption" means that the relationship constituted between the parties is in all respects equal to that between a natural mother and child. "Limited adoption" means that a definite relationship is created, but that the right of inheritance, if conferred at all, is restricted. "Pseudo adoption" is used, for want of a better term, to describe transactions



in the nature of adoption but not legally sufficient to constitute even limited adoption; claims based on such transactions not infrequently lead to litigation.

### Ceremonies and Rights.

#### (1) WITHIN THE PERUT.

A woman may adopt a member of her own *perut*, (using *perut* in its wider sense to mean a division of a tribe, not of a family) without any formality other than a family feast; the *lembaga* need not be present but he ought to be informed of the event; the *ibu-bapa* of the *kampung* ought to be invited to the feast but his presence is probably not essential to the validity of the adoption; it is not necessary to refer the matter to the *Undang*. The person so adopted becomes a proper customary daughter with rights of inheritance so this amounts to what has been called "full adoption" (*Re Tembam dec.*, p. 250, *Re Siato dec.*, p. 249, *Re Kepam dec.*, p. 252); there is no case in which a male has claimed to have been adopted in this way. Usually the adoptee is a niece or cousin of the adopting parent, in which case the event cannot properly be described as *kadimkan* because it is obviously impossible to *kadimkan* a person who is *kadim* already; the transaction is often called *tarek*, but if there were no traceable relationship between the parties the word *kadimkan* might be used.

*Ex hypothesi* the validity of this form of adoption depends on the express consent of the *waris* evidenced by their presence at the feast, and it would therefore be impossible for a woman to confer rights of inheritance by this method on an unrelated member of the *perut* if she had a suitable relative willing to be adopted.

Full adoptions of this class are frequently performed by women who have no natural daughter, but if for any reason the natural daughter cannot conveniently reside at home or if she is unable to manage the family property, adoption of an additional daughter may be allowed in order that the parent may be cared for in her old age and that the primary duty of preserving the tribal property may be adequately performed. In such cases the shares of the natural and adopted daughters should be definitely allotted during the life of the mother; failing such allocation the adopted daughter will rank equally with the natural daughter on inheritance.

Such an adoptee is not necessarily debarred from inheriting from her natural mother also (*Re Siato dec.*, p. 249); if her claim to do so is disputed it is submitted that the proper test is whether, on a fair distribution of all the property in the family, the adoptee may inherit both from her natural and from her adoptive mother; this principle was applied in *Re Sa-Erah dec.* (p. 217) and in *Re Romat and Tiamin* (p. 204) in both of which adoption was alleged but not proved and it would probably also govern a dispute as to the



succession to the property of an adoptee who died before her adoptive mother; such cases are extremely difficult because adoption is relied on as a ground for variation from the dominant rule of equal distribution *per stirpes*. In one Rembau appeal, (No. 12 of 1924) it was stated in evidence that "if the natural mother leaves no heirs the claim of the child, though adopted, revives," but it was not explained whether the expression "no heirs" meant no direct heirs, or no other possible heirs. That case was a peculiar one. The deceased left six natural daughters; all claimed shares in the estate, but five of them resisted the claim of their sister who, they contended, had been adopted by their aunt; the adoption however was not proved so the property was transmitted to the six daughters equally and as no judgment was given on the issue of double inheritance the case is not reported.

Full adoptions of this class must be carefully distinguished from the other two degrees which are not infrequently pleaded; the distinctions are fine and the facts often difficult to establish. In limited adoption a woman takes a relative to live with and cherish her, and in consideration of this service gives ascertained property. The property so given may or may not be entailed; if it is entailed the consent of the *waris* must of course be obtained but it cannot be withheld so as to prevent a childless woman from adopting a suitable relative (*Kiah v. Amah*, p. 253). A saying applied to this transaction is *anak di-tarek di-berikan harta*, "a child is adopted and property is given," which means that if a child is adopted property must be given (*Kiah v. Amah*, *supra*.) The child so adopted may inherit the acquired property of the adoptive parent (*Re Libah dec.* p. 255) but if property was actually conveyed by the adoptive parent at the date of adoption the adopted child is probably not entitled to inherit anything further by virtue of the adoption. She may however have a claim to inherit a share of the adoptive parent's property irrespective of the adoption, and she is, of course, not debarred from claiming a share of her natural mother's property also. In case of dispute the test is to examine all the property of the whole family and so determine how much each member can fairly claim on a reasonable distribution. The difficulties are obvious; the disputes are bitter; the principles are fairly clear in theory but very hard to apply in practice; the case *Re Sa-Erah dec.*, p. 217) in which an adjustment by the Collector was affirmed on appeal may be referred to for guidance.

Pseudo adoption is where a woman merely takes a relative to live with and cherish her without adopting her or giving her any property. Such a relative acquires no legal rights of any kind, but if she in fact pays the funeral expenses she is entitled to recover them (*Re Siada dec.* p. 257); she is entitled to recover the cash, if necessary by sale of a portion of the property—she is not entitled to a portion of the actual land; cherishing of this kind, though it confers no rights, is recognised by the custom as a ground on which

a share in the property of the person cherished may by *pakat* be allowed to devolve on the cherisher, provided that all the nearer relatives consent (*Re Nyonya dec.*, p. 224).

(2) ON ADOPTION FROM ANOTHER PERUT OF THE SAME TRIBE.

There is only one case in which it has been alleged that a woman adopted a member of another *perut* of her tribe and as the issue of adoption was not contested no enquiry as to ceremonies was necessary; the case is reported on another point (*Bidah v. Peah*, p. 187). From that case, and from enquiries as to adoption generally which were made by direction of the Resident in connection with *Re Haji Abdul Rahim, dec.* (p. 244) it appears that full adoption of such a person is accomplished by performing the ceremony of *chechah darah* in the presence and with the approval of the *sembaga* of the tribe; if the parties are subject to different *sembagas* the consent of both must, of course, be obtained. It is not necessary to refer the matter to the *Undang*.

*Chechah darah* means "dipping (the finger) in blood." A goat is slaughtered and some of the blood collected in a bowl and the parties to the adoption dip their fingers in the bowl in token that they thereby become blood relations. The flesh of the goat is served at a feast given by the adopting family and a customary fee of \$7.20 is paid to the *sembaga*. This procedure would be described as *kadim-kan*.

A person adopted in this way can inherit both ancestral and acquired property, and presumably relinquishes eligibility for such of the tribal chieftainships as devolve on the family of origin in exchange for whatever rights the family of adoption may possess.

From the same enquiries it appears that limited adoption of a member of another *perut* can be accomplished without these ceremonies but it is submitted that some definite act of adoption would be necessary as is the case within the *perut* (*Re Siada dec.* p. 257); that informal act, however, would not be described as *kadim-kan*. Such an adoptee may inherit acquired property from the adoptive parent, but not ancestral property, and a *fortiori* eligibility for tribal office is not affected. The considerations regarding limited adoption within the *perut* (*supra*, p. 42) and the remarks on evidence (*infra*, p. 46) would apply to transactions of this type.

Pseudo adoptions from another *perut* would, of course, be readily distinguished from full adoptions because failure to prove that the proper ceremony was performed would be immediately fatal to the claim, but the distinction between pseudo adoption and limited adoption is merely a matter of evidence and is likely to be one of great difficulty.

## (3) ON ADOPTION FROM OUTSIDE THE TRIBE.

Witnesses have stated that there is only one kind of adoption into a tribe but the cases show that there are two well-defined degrees which are distinguished by the ceremonies performed and are usually termed *kadim adat dan pesaka*, which is a full adoption and *kadim adat* which is a limited adoption; the latter is more correctly called *kadim adat pada lembaga*.

For *kadim adat dan pesaka* it is necessary to secure the presence and approval of the *Undang*, and to invite all the *lembagas*, both "the Eight" and "the Twelve"; a customary fee of two *bahara*, (now commuted to \$48 cash) is paid to the *Undang*, who distributes half the amount among the *lembagas* and elders actually present, and oblations of rice are made. A buffalo is slaughtered and some of the blood collected in a bowl; a member of the adopting family and the person to be adopted dip their fingers in the blood, *chechah darah*, and according to some accounts a mark is made on the forehead of the adoptee. Probably the details vary but it is certain that the essential feature of the ceremony is the dipping of the fingers and that it is emblematic of the fact that the parties are thereupon deemed to become blood relations. The flesh of the buffalo is eaten at a public feast given by the adopting family.

This form is applicable to the adoption of a person of either sex (*Re Sitiawa dec.* p. 238) and there is no doubt whatever that it confers on a member of another tribe, or even of a different race, full membership of the tribe and *perut* of the adopting family, full rights of inheritance of all kinds of property, and also, in the case of a woman, the same rights for her offspring whether born before or after the adoption; it is however suggested that any offspring who were already adult at the date of adoption would be required to take part in the ceremony unless they elected to disclaim. It has been stated in evidence on several occasions that a male person adopted in this way becomes eligible for the tribal chieftainships open to the adopting family, and this is probably correct since the form is known to be applicable to the adoption of a male; it appears therefore that the word *pesaka*, when used in the phrase *kadim adat dan pesaka*, means *pesaka giliran* of the tribe and not merely *harta pesaka*. The son of a woman adopted in this form, at any rate if born after the adoption, has all the political rights of a natural-born member of the adopting family (*Bulat*, of 1928, p. 247).

As the integrity of the tribe is the fundamental principle underlying all rules of *adat* no person can be a member of more than one tribe; on adoption by this method, therefore, the adoptee is entirely cut off from the tribe (if any) of origin and consequently cannot inherit from the natural relatives; on the same principle the adoptive and not the natural relatives succeed to any property of an adoptee which does not devolve on his or her issue, for the legal act which transfers the person of the adoptee to the adopting tribe

must also transfer any property of which the adoptee had power to dispose. The adoptee would, of course, be required to transfer any ancestral property to some other member of the tribe of origin before the *lembaga* gave his assent to the adoption.

For *kadim adat pada lembaga* it is necessary to secure the presence and approval of the *lembaga* of the adopting family, and usual to invite one or two other *lembagas*; probably there ought to be representatives both of "the Eight" and of "the Twelve" but it is not necessary to invite them all or to invite the *Undang*; a fee of twenty *rupiah* (now commuted to \$7.20 cash) is paid to the *lembaga*, of which half is distributed to the tribal elders present; a goat is slaughtered, the ceremony of *chechah darah* performed, and a public feast is given by the adopting family.

A male person was adopted in this way in 1919 (*Re Kek Sian dec.* p. 242). It seems that the true significance of *kadim adat* is purely exogamous; the adoptee becomes a member of the tribe and *perut* of the adopting family, and is thereafter debarred from marrying any member of that exogamic unit: he becomes an *anak buah* of a *lembaga* but probably he does not become qualified to hold any tribal office or to vote at the election of any chief; he would not be allowed to hold a life interest in ancestral land but he could inherit acquired property from his adoptive family and probably they from him (see the commentary to *Re Kek Sian dec.* at p. 243); he would, of course, be entitled under the ordinary rules for distribution of *charian* to inherit from his wife if she predeceased him, and similarly his wife and children would inherit from him.

Under Malay regime this form of adoption was probably a condition precedent to the marriage of any foreigner to a Rembau woman because without it the man would have been subject to no *lembaga* and therefore in an anomalous position, not only on dissolution of the marriage but also during the marriage in any conjugal dispute and in any case of *balas* or distress or crime cognisable by a *lembaga*; as the powers and jurisdiction of tribal chiefs were gradually abrogated and superseded by the general jurisdiction of the Courts and Police set up under the British regime, the necessity for this type of adoption gradually vanished and the practice fell into disuse; it is now very rare, but a remnant of it survives in that a foreign bridegroom still needs as it were a "godmother" to be his sponsor at the marriage (*Mahawa v. Manan*, p. 111).

There has been much conflict of opinion as to whether this form is applicable to the adoption of a female, and the practice in recent years has not been uniform (*Re Haji Abdul Rahim dec.* at p. 246). It has now been settled that a woman may be adopted in this way but she cannot inherit ancestral property and her descendants do not become eligible for the *giliran* (*Bulat* of 1928, p. 247).

Pseudo adoptions from outside the tribe are not difficult to distinguish as the proper ceremonies for the two degrees described are well known; *Re Leha dec.* (p. 240) and *Re Imat dec.* (p. 248) are typical illustrations of this class of case.

### Evidence of Adoption.

The unexpressed theory underlying the Malay idea of adoption is the primitive and unscientific notion that the cogency of evidence ought to vary in proportion to the gravity of the issue to be proved. Thus, the presence of the *Undang* and all the *lembagas* is necessary to establish the fact of an adoption by virtue of which the *pesaka* of one tribe is to devolve on a person born outside that tribe, whereas the presence of the *lembaga* only is sufficient to prove the validity of an adoption without rights of *pesaka*, and a mere family feast is all that the *adat* requires even for a full adoption within the *perut*. The direct consequence of these false distinctions is that though *kadim adat dan pesaka* is readily and conclusively proved, adoption within the *perut*, which is equally important from the legal point of view, is frequently left open to doubt.

The best evidence of adoption is that of the chief who presided at the ceremony and gave his official sanction; if he is dead, that of other chiefs, or of private persons, who were present must be accepted, but in the case of the mere family feast such evidence is thoroughly unsatisfactory, especially where the dispute arises many years after the event, because the witnesses are all more or less directly interested and women especially are subject not merely to bias but to violent passion.

If a woman is alleged to have been adopted within the *perut* in childhood it is most important to determine at whose house she was married because that can be established by independent evidence; if she was married from her natural mother's house that fact is practically conclusive against any prior adoption; if she was married from the house of the alleged adoptive mother that fact is conclusive in favour of adoption, though not necessarily in favour of full as against limited adoption, which may be the real issue; if the adoption is alleged to have taken place after marriage it can only be proved by the opinions of tribal chiefs, or *kampung* neighbours, which are most unreliable, and by general evidence of facts such as residence, cherishing, cultivation of land or payment of funeral expenses, from which the intentions of the parties may be inferred. The difficulty is that the facts may be consistent with full or limited adoption or even with no adoption, as in *Re Siada dec.* (p. 257).

There is however one test which is sometimes available; ancestral property may have been transferred or transmitted to an alleged adoptee in circumstances definitely consistent or inconsistent with the alleged adoption; the fact of such a transfer or transmission

is usually capable of conclusive proof by Land Office documents and inspection may even shew that the point at issue has already been disputed and decided. This test must be applied with great care and caution because a transfer especially, and a transmission occasionally, may comprise only a portion of the property in question, and an inference can safely be drawn only with regard to the total holding of the family.

It is, of course, always necessary to apply the general principle that the onus of proof is on the claimant; if she cannot adduce affirmative evidence to shew that she was actually adopted the property must be transmitted according to the ordinary rules. Even in the cases where no ceremony is prescribed a definite act of adoption must be proved. Adoption will not be inferred from mere residence (*Re Siada dec.* p. 257).

## Chapter V. CONTRACT AND TORT.

### Pulang.

*Pulang*, literally "to go home," is the Malay term for a conveyance "for natural love and affection" or in consideration of the discharge of some obligation of the conveyor; on the condition (if any) being fulfilled the *pulang* becomes absolute; in no case is there is any right of redemption (*Nyai Ampar v. Tukang Rahman*, p. 67).

The power to *pulang* without consideration is strictly limited by the custom—thus there can be no *pulang* between husband and wife, and a mother cannot *pulang* to one daughter so as to disturb the shares of the others, (*Meriam v. Timah*, p. 123). A man however may, if he wishes, *pulang* his own share of the *charian laki-bini* to the children; this may also be called *tentukan*.

If property is *pulang* for valuable consideration then on fulfilment of the condition ownership passes and the property becomes the *charian* of the transferee, (*Minah v. Kepam*, p. 143), but property *pulang* for natural love and affection is deemed to be tribal property, and if not already entailed becomes entailed on the transfer; acquired land transferred for love and affection, therefore should forthwith be made subject to customary limitations. Property so given to a married man by his family ranks as *pembawa*, (*Re Ripin dec.*, p. 77) and to a married woman by her family, as *dapatan* (*Re Haji Norijah dec.*, p. 76).

### Pemberian.

It is within the custom for a person to make a conditional gift of suitable property, not necessarily land, in consideration of a guarantee by the donee to furnish maintenance and funeral expenses for the donor. The distinctions between *kepan* and *pemberian* are two—firstly, *kepan* is held until death by the person for whose benefit it is allocated whereas *pemberian* is conveyed forthwith to the ultimate beneficiary, and secondly, the allocation of *kepan* does not shift the duty of providing funeral expenses whereas *pemberian* may relieve the person who would otherwise be liable of her responsibility.

The principle of *pemberian* was established in *Re Haji Nudin dec.* (p. 259) in which case it operated to divert *harta pembawa* from the *waris* to the wife, who was responsible for the funeral expenses in any event, and who would have had no means of reimbursing herself but for the *pemberian*.

It may be observed in parenthesis that the situation of a wife whose husband dies shortly after marriage is very hard. There may



well be no *charian laki-bini* at all, and no matter how substantial the *harta pembawa* may be, it all returns to the *waris* of the deceased yet the widow cannot compel them to contribute anything to the funeral expenses.

### Balas.

In olden times a tribe which suffered the loss of one of its members at the hands of another tribe exacted personal restitution—the tribe at fault was required to make good the loss by handing over a substitute who thereupon became a member of the injured tribe; this was called *balas*.

It appears from Parr and Mackray (at page 71) that this feature of the custom had already fallen into desuetude more than twenty years ago, but the liability for the funeral expenses is still recognised. The evidence in *Chemah v. Ma'ali, Minah and Lisut* (reported at p. 260) indicates that the custom, if it was accurately recorded, has changed in the interim. At the present time the wife and the *waris* of the slayer are jointly liable for the funeral expenses of the slain, but it does not appear that any compensation is payable to the family of the deceased.

In the case of married men it was, of course, the tribe of origin of the slain, not his wife's tribe, who claimed the substitute, and the tribe of origin of the slayer, not his wife's tribe, who furnished the substitute, because the wife's tribe has only a temporary interest in the husband; on dissolution of the marriage he returns to his own tribe so it is only his own tribe which suffers permanently by his decease. This is an application of the saying—*Nyawa darah waris yang punya*.

### Charges.

The traditional form of charge in Rembau is a very simple contract, which seems to have developed naturally in a community of illiterate small holders. The transaction is essentially one of loan, in which the borrower gives security by allowing the lender to occupy and enjoy an ascertained portion of the borrower's land until the loan is repaid. There is no interest. If the lender can make any profit out of the land that is his remuneration. The lender is not accountable to the borrower for the profits as these do not operate as part satisfaction of the loan.

If the loan is for a specified period the lender cannot claim repayment till that period has expired, but the borrower is entitled to repay the loan at any time; if he tenders cash in full settlement the lender must accept it and yield possession of the land, but in that case the lender is entitled to compensation for any special damage he may suffer, and in the case of *sawah* land he cannot be deprived of the current season's crop.



These principles were laboriously established in the cases *Suleiman v. Usop*, and *Jaibah v. Rampai*, reported at pages 261, 265. The transaction has no special Malay name but the phrase *gadai makan hasil* describes it and is usually understood.

Originally such contracts were oral and the entry of the lender into the hypothecated land was formally witnessed by the *lembagas*; after the issue of documents of title it became necessary for the transaction to be registered and difficulties arose over the construction of the older Land Enactments, such as that of 1911, which provided for the registration of charges "substantially in the form contained in the schedule with such variations if necessary as the Collector may permit"; the prescribed form only contemplated the case where the chargor remained in occupation of the land, but for many years the qualifying words were read as authorising the addition of a clause providing for the chargee to enter into occupation, and charges so altered were frequently registered in Rembau. About 1920 however it was ruled that the addition of such a clause was a substantial variation from the form and rendered the instrument unfit for registration; after that ruling therefore it was usual for the borrower to grant a charge in the ordinary form, and for the chargee to go into occupation under a concurrent oral agreement; in *Suleiman v. Usop* (p. 264) the Supreme Court definitely held that such a transaction was valid.

With effect from 1928 the defect in the law has been remedied and it is now possible to register an instrument in which the whole transaction is stated, so the difficulty will occur less frequently in future, but a considerable number of charges of the type in question in *Suleiman v. Usop* are still in force, and to these, the rulings in that case will continue to apply.

It must be remembered, however, that Rembau charges are not exclusively of the type described. The ordinary contract under which the chargor does remain in occupation of the land is sometimes made even when both parties are Malays. It is therefore of the first importance to enquire in every case whether the chargee is to go into occupation or not, and to see that the instrument is drawn accordingly. Petition writers almost always record transactions inaccurately, even when they have no intent to deceive.

Entailed land cannot be charged at will, but only in order to raise funds for customary purposes, and the holder is bound to offer such land to her own family and tribe, before hypothecating it to a stranger. This rule applies to all types of transaction irrespective of whether the lender is to go into occupation forthwith, because the ultimate sanction of the security is the power of sale, and this may eventually result in the land passing into the absolute ownership of another tribe. The family and tribe therefore have options to hold entailed land by way of security in the same order of priority as their options to purchase, (*supra*, p. 33).

Though they may not have exercised these options in the first instance, yet if the chargee takes steps to recover the money lent they have a further opportunity and can then claim to pay off the amount due to the original lender and be registered as chargee in his place, and of course if he was in occupation, to take over the land. As this later right can only be exercised on payment of the full amount outstanding it is essential that the amount of an intended charge should be made known to the tribe in the first instance, and that it should not exceed a fair valuation of the land. If these conditions are not observed the transaction may be set aside, (*Repa v. Siah and Taib*, p. 185).

If a charge is eventually enforced by sale under an Order of the Collector, the bidding is first confined to the tribe of the chargor, and if they fail to bid the upset price the land is offered at a later date to all the tribes: to such sales the provisions of the Malay Reservations Enactment do not apply (N. S. 1068/28; D. O. R. 348/28).

### Quasi Charges.

Transactions in substance similar to charges are still occasionally completed without registration and sometimes even without execution of any document. Such dealings should be sternly discouraged because they offend against the principle of registration of title and therefore against public policy, but they are not necessarily illegal, or void as between the parties to them, and though wholly outside the Land Code they may be enforceable in a civil suit.

(For further information on these difficult questions of law reference may be made to Innes on Land Registration, at pages 16, 21; the "Port Swettenham case," *ibid* p.p. 202, 212; *Haji Abdul Rahman v. Mohamed Hassan*, I F.M.S. Rep. p. 290; *Ong Tin and Goh Soo Pin v. The Seremban Motor Garage*, I F.M.S. Rep. p. 308, and *Boase v. Cluny Rubber Estates, Ltd.*, II F.M.S. Rep. p. 130.)

Such an informal transaction may be described as *chagaran*, but this term is loosely used and does not necessarily imply that the lender occupies the land, though of course the lender usually does occupy the land especially where the contract is not reduced to writing. The meaning of *chagar* was carefully investigated in *Norisah v. Miut* (page 267).

It is to be remarked in this connection that though entailed land may, after due notice, be charged to another tribe yet at a sale in execution of a decree the bidding must in the first instance be limited to members of the holder's tribe; if they fail to bid the upset price the sale is adjourned and the land offered at a later date to all the tribes. This is a limitation imposed by the legislature to

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protect the tribal option, which is adequately secured by the notice in the case of a charge but which cannot be so secured in the many ways by which a holder may expose herself to a civil action.

### Agreements and Caveats.

The Customary Tenure Enactment confers upon the Collector exclusive jurisdiction over all questions of caveats affecting land subject to that Enactment, and it is therefore necessary for the Collector Rembau to decide numerous issues of law which do not ordinarily arise except in the Supreme Court.

These powers are most frequently exercised in connection with a curious type of transaction which has become so common in recent years as to call for notice in a work on customary law. It is a contract in writing, usually prepared by a petition writer and therefore susceptible of variations but the following example is typical of several thousands which are now in existence and will serve to illustrate the principles applicable to agreements and caveats generally.

“\$200—I the undersigned Limah binti Kassim of Chengkau hereby acknowledge to have received the sum of dollars two hundred only being a loan lent to me by Daud bin Hassan of Gadong promising to repay to him the said sum within a period of two years from the date hereof.

If the said sum of two hundred dollars cannot be settled within the above mentioned period of two years I agree to make a charge on my land, E.M.R. 7962 Chengkau.

Dated at Rembau this 4th April, 1928.

*Right thumb of Limah binti Kassim.*

*Witness:—Dato Puteh Mohamed.”*

For the purpose of stamp duty such an instrument is composite and is liable to two separate duties—the first clause to an *ad valorem* duty as a promissory note and the second to a fixed duty as an agreement; the aggregate of these should be levied. The extract may or may not be deposited with the lender, and the land may or may not be entailed; action may be taken during the initial period, or after the note falls due but before institution of a suit, or in the civil court. Hence there are no less than twelve distinct situations in which it may become necessary to determine the rights of the parties to this apparently simple and all too common transaction.

If the extract is handed over, and the land is not entailed, the lender has a clear right under section 134 of the Land Code to enter a caveat at any stage; this creates a statutory lien over the land. The deposit of the title coupled with the first clause of the agreement is sufficient to support such a caveat, without any recourse to the

second clause, which indeed is wholly superfluous in these circumstances.

As soon as he has obtained a decree for the sum due the depositor is entitled to an order of sale—he need not execute the decree by attachment in the ordinary way. A transaction of this nature is therefore substantially the same as a charge, but the land can be sold with even less delay and formality.

The Customary Tenure Enactment makes it illegal for entailed land to be charged *or otherwise dealt with* except in accordance with the custom; to charge entailed land without notice to the tribe is plainly contrary to the custom; therefore entailed land cannot be lawfully be subjected to a lien by deposit of the extract, and a caveat presented under section 134 ought to be rejected.

The lender however is not thereby deprived of his remedy because the borrower cannot dispose of the land to any one else without notice, and if a notice is issued it is open to the note-holder to bring his claim before the Collector in the form of an objection to the proposed dealing. Such an objection would not be likely to succeed unless the money lent was used for a purpose sanctioned by the custom, and it is hoped that the legislature will clear up the present doubtful and unsatisfactory state of the law by expressly prohibiting all liens over entailed land.

In point of fact the extract is seldom deposited in connection with agreements of this type, so the question of security usually turns on the second clause.

If the lender discovers or suspects that the borrower intends to charge or sell the land over his head he may seek to enter a caveat before the initial period of two years has expired. It was held by Mr. G. A. de C. de Moubray, when District Officer Tampin, that the agreement could not support a caveat during the initial period, but he expressly reserved his opinion as to whether it would do so after the note fell due. (No caveat was actually presented, so there is no record of this decision, which was given orally in the presence of the writer).

It is submitted with some confidence that the transaction is a commercial one, and that the correct method of construction is to read the document as a whole, so as to discover the real intention of the parties, and to give effect to that if possible. Applying this principle it seems clear that under the contract in question the lender accepts the note as the only security for the stipulated period, but the borrower agrees to furnish further security in the event (which may not occur) of her being unable to repay the loan when it falls due. Clearly then, the land is not intended to be made available as security for the loan during the initial period and the lender would have no right to enter a caveat until the initial period had expired.

This means that the lender cannot prevent the borrower from disposing of the land during the initial period, and there is no reason why he should do so; such a disposal would not, *prima facie*, be fraudulent because the borrower might honestly intend to repay the loan at due date.

The answer to the disgruntled lender is that it was open to him to insist on a registered charge before advancing the money; if for his own reasons he chose to accept an inferior security, he must take the consequences. The function of the Land Office is to register such transactions as the legislature may approve; the Collector should not essay the undesirable and hopeless task of extricating fools from the snare of their own folly.

Against this view it might be argued that in the express affirmative agreement to charge there is an implied negative agreement not to dispose of the land during the period of the loan, and that this implied negative agreement is sufficient to support a caveat. Each individual agreement must be considered on its own merits, but it is submitted that the example quoted is not susceptible of that construction.

If, however, the note remains unpaid at the due date, the holder has then a clear right to enter a caveat founded on the second clause, for the proprietor agreed to make a registrable charge, and such an agreement is valid as between the parties to it—*Haji Abdul Rahman v. Mohamed Hassan* (I F.M.S. Rep. p. 296).

Even if the land is entailed, the note holder can enter his caveat at this stage; since the agreement cannot be completed without the assent of the tribe it is the duty of the maker to do all in her power to obtain that assent, (*Lim Yew Soon v. Gan Chye Neo*, II F.M.S. Rep. p. 5).

A caveat based on the agreement to charge does not operate in the same way as a caveat supported by deposit of the title; no lien is created and the caveator cannot obtain an order of sale "forthwith;" he must execute his decree in the ordinary way.

Yet another difficulty may arise when the holder sues on his note. The defendant may claim that under the second clause she has an option to extend the period of the loan by executing a charge. Although a number of suits have been based on documents exactly like the one under discussion this point has not yet been raised. It is submitted that the plea would be unsuccessful because no period for the charge is stipulated, and the agreement is therefore too vague to be susceptible of specific enforcement. If the parties could agree on the terms of a charge the suit would, of course, be settled and withdrawn. After judgment, the threat of attachment usually induces the debtor to satisfy the decree by instalments; failing that the land can be sold by auction but if it is entailed the bidding

is limited in the first instance to members of the holder's tribe. As the law stands it is further limited to female members; but in this particular the legislature has gone further than the custom warrants, (*Tiawa v. Bolok*, p. 191); it is to be hoped that this defect will be remedied.

The transaction is particularly objectionable when applied to entailed land but this method of dealing is always unsatisfactory and the fact that it has become so common is most unfortunate.

Conclusions as to the right to caveat may now be tabulated:—

AS DEPOSITEE OF EXTRACT.

	<i>Entailed Land.</i>	<i>Other Land.</i>
During initial period,	cannot caveat	can caveat.
After due date but before suit,	cannot caveat	can caveat.
After judgment,	cannot caveat but can attach	can caveat or attach.

AS INTERESTED UNDER SECOND CLAUSE.

	<i>Entailed Land.</i>	<i>Other Land.</i>
During initial period,	cannot caveat	cannot caveat.
After due date but before suit,	can caveat	can caveat.
After judgment,	can caveat or attach according to the terms of the judgment.	

### REPORTED CASES.

The Reports are arranged as far as possible in logical order corresponding to the arrangement of the treatise but the classification is of necessity only a rough one as several of the cases decide points which are discussed in different chapters. For the sake of clearness the successive suits connected with Puan's estate have been separated from the rest and placed in their own chronological order.

The spelling of proper names in these Reports is neither scholarly nor uniform but it was considered better and safer to reproduce the names as they appear in the actual Records and registers than to attempt to revise them. In a few instances it was found necessary to alter a spelling merely to preserve the identity of a name which appeared in more than one form in a single case.

**BIMBANG v. TIAMBI.**

1. The *waris* of an unmarried man are responsible for his debts.
2. The *adat* Rembau is recognised and enforced by the Courts and is not contrary to public policy.

*Preliminary Note.*

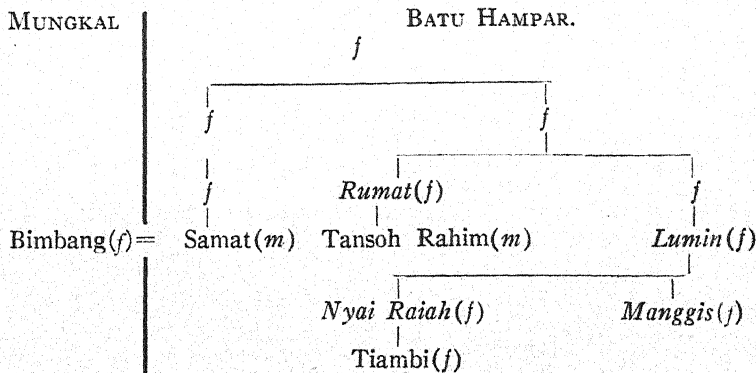
The only case on the *adat* Rembau hitherto reported is *Bimbang v. Tiambi* which is noticed in Innes on Land Registration, at page 285 where the appellate judgment is called *In re Tiambi* and reproduced without any adequate statement of the facts; the very misleading headnote:—"Custom of Rembau—House on piles may be moveable property" suggests that the learned author did not grasp the full significance of his own decision.

As this case has from time to time been the subject of comment it was decided to prepare a revised report but the Supreme Court has not preserved the file of the appeal so it is not now possible to compile a complete or satisfactory account of the matter. The Magistrate's own notes of the original trial have, however, survived in Rembau and from these the following reports have been prepared. The "further evidence" mentioned in the appellate judgment has, of course, been lost with the file.

**Bimbang v. Tansoh Rahim.***Civil Suit 47/03.*

This was a suit to recover the price of a house sold but not delivered to plaintiff by defendant.

The parties were related thus:—



By a memorandum in writing dated 4th August, 1903, execution whereof was attested by the Magistrate (*W. H. Mackray, Esq.*) Tansoh Rahim acknowledged receipt of \$133 paid to him by 1929] *Royal Asiatic Society.*



Bimbang, being the price of a house standing in a *kampung* at Spri comprised in O. T. 716. The house and land had been inherited by Tiambi, through Lumin, from Rumat who had no daughter; the title was registered in Tiambi's name from 1888 (but it does not follow that Rumat had died prior to 1888). Tiambi was living in the house at the date of the sale but was not a party to the transaction. Bimbang's intention was to remove the house piece-meal and rebuild it on her own land; she never purported to buy any portion of the Batu Hampar land.

Immediately after the transaction with the defendant, Bimbang went to the house, informed Tiambi of the sale, and gave her three days in which to remove her effects. Afterwards Tiambi refused to yield possession of the house.

The defendant was present at the opening of the trial but the hearing was twice adjourned and when judgment was given he had gone to reside in Selangor.

A. E. C. FRANKLIN, Esq., *Magistrate, Rembau*:—"Defendant admits receiving \$133. The evidence shews that a house was actually sold but that it was not really defendant's house. Tiambi, who claims the house, was no party to the transaction and refuses delivery. It is not proved that Tansoh Rahim can enforce delivery. I therefore give judgment against Tansoh Rahim for \$133 and costs."

### **Bimbang v. Tiambi.**

*Civil Application 19/04.*

Bimbang called upon Tiambi to shew cause why execution of the decree in C. S. 47/03 (*supra*) should not issue against her on the ground that she, Tiambi, the *waris* of Tansoh Rahim the judgment debtor, was by the custom of Rembau responsible for his debts.

The applicant contended that the *waris* of an unmarried man (*i.e.*, a bachelor, divorcé or widower) are responsible for his debts, and her *lembaga* gave evidence to that effect.

The *lembaga* of the respondent, and three other chiefs called by her, assented to that as a general proposition but added a qualification, namely that if the unmarried man had received, or made away with, a portion of the ancestral property the *waris* have no further liability in respect of him. The respondent's *lembaga* said that Tansoh Rahim, by arrangement with Tiambi, had sold part of the ancestral land inherited from Rumat, but two other witnesses said that Tiambi had inherited the whole of the ancestral property of the family.

(*Note*.—This question of fact does not appear to have been investigated; the Old Title does not support the statement that part of the holding had been sold but

no one acquainted with Old Titles would infer the contrary from its silence. The Magistrate seems to have rejected the evidence as to the qualification. Perhaps the "further evidence," referred to by the Senior Magistrate *infra*, negatived the allegation of fact that Tansoh Rahim had sold part of the land. (E.N.T.)

One of these witnesses averred that he himself had bought a house from Manggis, quite apart from the land on which it stood.

C. W. C. PARR Esq. *Magistrate, Tampin*:—"The Court is of opinion that by ancient custom the responsibility for a man's debts incurred whilst unmarried falls on his *waris kadim*, that this custom has never been repealed or set aside by any law of the State and that its application in this case appears equitable.

The Court finds that Tansoh Rahim was unmarried when he incurred the debt which it is now sought to recover by execution.

It is ordered that execution issue against the house sold by Tansoh Rahim to Bimbang, situated in land held by Tiambi under O. T. 716 *mukim* of Spri, such house being considered as moveable property under section 290 of the Civil Procedure Code."

290. (i) Sales of immovable property in execution of a decree may be ordered by the Court of the Senior Magistrate only.

(ii) When the judgment-debtor under any decree of a lower civil court is a tenant of immovable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove with the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing. [Civil Procedure Code, 1902.]

Tiambi appealed.

J. R. INNES Esq., *Senior Magistrate, Negri Sembilan*:—"This is an appeal by one Tiambi binti Ma'Amin against an order made by the Magistrate of the Rembau Court that a house owned by the said Tiambi binti Ma'Amin should be sold in satisfaction of a decree made in favour of one Bimbang binti Kulup Suloh for \$133 against one Tansoh Rahim. This order was made on the ground that by the custom of Rembau, where all the parties to the suit reside and where the above-mentioned house is situated, the responsibility of a debt incurred by a man while a bachelor or widower falls upon his *waris*—i.e., relations on the mother's side. It was given in evidence that Tansoh Rahim was unmarried when he incurred the debt in question and that Tiambi was his female relative on the mother's side who has inherited the ancestral property and would thus, in accordance with the local custom, styled "Adat Perpateh," be responsible for Tansoh Rahim's debts.

The appeal came before the Court of the Senior Magistrate, Negri Sembilan, at Seremban during the April Assizes and the record was returned to the Magistrate of the District where the case had been heard for the taking of further evidence in regard to the peculiar local custom in accordance with which the order purported to have been made. The Magistrate at Rembau has been at some pains to take a quantity of very useful evidence upon the subject and with this additional evidence before it the Court has been able to arrive at a decision on the questions raised by the appeal.

The first ground of appeal is that the house in question is not moveable property and therefore not attachable under section 290 of the Civil Procedure Code. In view of Bimbang's statement that she intended to take away the house piecemeal and build it afresh on her own land and of the well-known fact that up-country Malays frequently remove their houses from one place to another, I see no reason to dissent from the Magistrate's view of this point.

The second ground of appeal is that the custom in question is contrary to public policy. In dealing with this point the position of the District of Rembau and the characteristics of its people have to be considered. These people are among the most conservative of a conservative race and as they are nearly all agriculturalists they are especially tenacious of the customs relating to their land tenure and matters connected therewith. It has not been shown that the "Adat Perpateh," or custom by which the land devolves to the female line and carries with it the responsibility for the debts of the male relatives who are unable to meet their liabilities is, as at present observed, attended with any obvious injustice. The rule as to payment of debts would seem to follow not unreasonably from the rule as to succession to family lands which works so favourably for certain female members of the family. If the custom is not attended with any obvious injustice and if it meets with the general approval of those affected by it, as would appear to be the case, the disadvantages of the Courts disregarding it are manifest. This view derives support from the fact that in the Colony of the Straits Settlements recognition has been given by the Legislature to parts of the "Adat Naning," which is a local land tenure and body of customary law differing but slightly from the "Adat Perpateh" which has for so long been the people's law in Rembau. In the present state of the law in these States, and as long as the people of Rembau lead the lives they now do, it would seem inadvisable for the Courts to refuse their support to this local custom except in cases where there result from it some circumstances utterly repugnant to the broad principles of justice on which the legislation in force in these States rests. And this view would apply with even greater force to the question of setting aside an order of a local Magistrate based upon such custom and arrived at after an intelligent inquiry into the circumstances of the particular case before him. Having

taken this view, it is unnecessary for me to deal with the third ground of appeal, and the fourth has been met by the taking of the additional evidence.

The order of the Magistrate is accordingly upheld and the appeal dismissed with costs."

### Commentary.

The important part of the judgment is the decision that the custom of Rembau is not contrary to public policy and that it is to be recognised and enforced by the Courts. It was not until five years later that any portion of the *adat* received express legislative sanction, and consequently the scope and force of the ruling were far greater when it was given than they appear at the present time. It is in this general aspect that the case is properly regarded as a leading case and in this respect it has been followed—see *Re Kulop Kidal dec.* at page 92.

2. The decisions on the other issues were relatively unimportant for the facts were exceptional and of very limited application. On its own merits the case is an example of one of the most difficult of all judicial problems namely, the question which of two innocent parties is to suffer for the default (or fraud) of a third. An English jurist would be inclined to apply the maxim *caveat emptor* and say that Bimbang must bear the loss, especially since she was aware from the start that the house was not on the seller's land but on Tiambi's and Bimbang could therefore be deemed to have had notice that she was contracting to buy from one whose title was, at the least, doubtful. This view, however, ignores the fact that the parties belonged to different tribes. From the Rembau standpoint the dispute was not a dispute between two individuals at all. The Mungkal tribe, through Bimbang, had paid \$133 to the Batu Hampar and when the consideration failed it was for the Batu Hampar *waris* to make restitution to the Mungkal, and afterwards settle, as best they could, with their own tribesman. As Tansoh Rahim had left the State there was no effective way by which the decree against him could be directly executed.

3. Though it is not dealt with in the judgments there is another ground on which the case might well have been decided in favour of Bimbang. In 1899 the State Council resolved that in Rembau a male can take a life interest in ancestral property to which there is no direct heiress. Under this ruling Tansoh Rahim could have claimed to enjoy the portion of the family land derived from Rumat for the rest of his life, with remainder only to Tiambi, though, of course, it is not suggested that he would have been entitled to dispose of the ancestral house without Tiambi's consent.

The net result of the whole transaction was that Tiambi had to pay \$133 to Bimbang but she was left in full possession of all

the family property and in a position to resist any further claims by Tansoh Rahim. She therefore received an undefined, but still substantial, consideration for her money whereas Bimbang, had she lost the case, would have received nothing whatever. In these circumstances, since one of the two women had to incur the loss occasioned by Tansoh Rahim, it was not unreasonable for Tiambi to be held liable; she could not have it both ways, though no doubt it was extremely irritating for her to be tricked by her two male relatives, (Samat being an active participant in the scheme) and to have her house sold over her head. Another fact proved, though not very material, is illuminating; Tansoh Rahim used \$33 of the cash paid by Bimbang to settle a decree against him in favour of Tiambi herself in a former suit and no doubt Tiambi was further exasperated on finding that she had been paid out of her own money.

From his own experience of Rembau the writer has little doubt that Samat and Tansoh Rahim had had differences with their *waris* for a considerable time; Tiambi had the best of the quarrel over Rumat's property and Tansoh Rahim then decided to retire from the fray and settle in Selangor; the sale of the house was his Parthian shot.

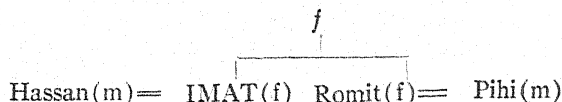
(The State Council Resolution is mentioned in Parr and Mackray at page 70; provision for registration of life interests was first made in the Enactment of 1926).

4. There are in all four cases dealing with ownership of a house on ancestral land. In this one, and in *Milah v. Shariff* (p. 182), the house was sold by a male member of the holding family and removed from the land; in this case the *waris* failed to recover the proceeds, but in Milah's case they succeeded; in *Ungkar v. Sichik* (p. 220) and in *Nyai Ampar v. Impam and Langkar* (p. 67) the house was held not to be removeable by the *orang semenda* as against the *waris*. It is clear that the principle of *adat* is that ownership of the house runs with the land.

The finding that the house was "moveable property" was a finding of pure fact on the evidence in this particular case, and has nothing to do with the custom. In point of *adat* a house is neither moveable nor immoveable. The distinction between moveable and immovable property is a characteristic of English law having its roots in feudalism and to import this classification into the law of matriarchal tribes is no more fruitful of intelligible results than would be an attempt to apply the laws of comparative philology based on European languages to the ideographic languages of China. E.N.T.

**HASSAN v. ROMIT.***Land Case 10/13.*

Property acquired during marriage is *charian laki-bini* and devolves accordingly, whether it is registered as "Customary" or not; an agreement to vary the succession is *ultra vires* a person subject to the custom and is void.



Hassan was married to Imat and they had two sons but no daughter. Imat, and her married sister Romit, jointly took up a new *kampong* lot at Selemak; the title was not marked "Customary Land"; the two women assisted their husbands to develop the land which was admittedly *charian laki-bini* of both couples.

Imat died and thereupon Hassan claimed to succeed to her half-share according to the rule *mati-bini tinggal ka-laki*.

Romit contested this claim, alleging that when the land was taken up it was agreed between the proprietresses and their husbands, that upon the death of either sister the survivor should succeed to the share of the deceased.

Romit averred that Hassan was a party to this alleged agreement.

Hassan denied the existence of the agreement.

The trial Collector held that the agreement was in fact made, and he transmitted the half share to Romit, accordingly.

Hassan appealed.

Two *lembagas* gave evidence that the rule is *mati bini tinggal ka-laki* and also that it is impossible for a married woman to take up new land as her separate estate, even with her husband's consent.

The Hon. Mr. A. H. LEMON, *British Resident*:—"I am of opinion that the land should be divided, Romit being entered as the holder of one half and Hassan of the other half—I doubt whether the agreement, even if made and assented to by Hassan, was valid to oust the operation of the *adat* which seems perfectly clear."

**Commentary.**

This case is a clear authority for the proposition that the *adat* governs succession in every case and independently of whether or not land is specifically registered as "Customary"; it is in perfect harmony with the decisions of Acton J., that the same principle

governs land even in another State and also moveable property—*Sadiyah v. Siakim* (p. 65) *Re Kulop Kidal dec.*, (p. 92).

The only issue at the trial and on the appeal was the existence and effect of the alleged agreement; no evidence or argument was tendered as to the rights of the two sons of the marriage, so the case is not an authority on the question of the claims of sons as against the widower, to the *charian*; if Romit was maintaining her nephews she should have claimed on that ground. E.N.T.



**SADIAH v. SIAKIM and HASSAN.**

*Seremban Supreme Court Civil Suit 198/25.*

Land acquired during marriage, the woman being subject to the custom, is *charian laki-bini* even though situated outside the Customary districts.

The plaintiff was a Malay of Kuala Jempol, district of Kuala Pilah; the first defendant was a Sumatran Malay; the second defendant was a minor and nephew of first defendant.

The plaintiff was married to the first defendant in 1913. The first defendant was the proprietor of E. 206 Pedah, district of Kuala Lipis, Pahang, and transferred it to second defendant in 1919. On the same day E. 204 Pedah was transferred to second defendant by one Sapi bin Nakhoda Raja. Approved Application 809/25 Kuala Jempul, registered in name of first defendant, was admittedly "joint earnings."

The plaintiff sued:—

- (a) for a declaration that E. 204 and 206 Pedah were *charian laki-bini*;
- (b) for an order annulling the transfers to second defendant;
- (c) for an order that both lands be registered in the names of plaintiff and first defendant jointly, or in the alternative for half their value;
- (d) for half of a sum in cash, which she alleged was also *charian laki-bini*, and the whole of which she alleged, had been appropriated by first defendant;
- (e) costs.

In his defence the first defendant alleged:—

- 1. that E. 204 had never been registered in his name and was not *charian laki-bini*;
- 2. that E. 206 was acquired before the marriage;
- 3. that he had never had the cash alleged;
- 4. that the plaintiff had been awarded, and had received, buffaloes and other property to the amount of more than her proper share of the *charian laki-bini*.

ACTON J., delivered oral judgment of which the following minute was recorded by the Registrar:—

"There will be declaration that the land held under E.M.R. 206 Pedah is, by the *Adat Perpateh*, *pencharian laki-bini*.

By consent, the transfer of this land to Hassan bin Haji Umar dated 18th March, 1919 is set aside and it is ordered that



the whole interest and title in this piece of land be transferred to the plaintiff.

The plaintiff undertakes to relinquish any claim she may have to any interest in the land held under E.M.R. 204 Pedah or to any other land now registered in the name of first defendant and to any money payment by first defendant to her.

The first defendant undertakes to relinquish any claim if any he may have to any land now registered in the name of the plaintiff.

The coupons for the quarter commencing 1st August, 1926 and all coupons now in the hands of the Asst: Registrar under the order of the 4th March, 1926 to be equally divided between plaintiff and first defendant.

The first defendant to pay costs agreed at \$125 to the plaintiff."

Afterwards the first defendant failed to transfer E. 206 Pedah to the plaintiff and upon a summons Acton J., ordered the Collector, Kuala Lipis, to register plaintiff as owner of E. 206 Pedah subject to the rights of any third parties who might appear on the Register.

## NYAI AMPAR v. IMPAM and LANGKAR.

17th October, 1912.

There can be no gifts between husband and wife.

*Tanah tebus*—the effect of purchase from *charian laki-bini* of ancestral land of the wife's tribe considered. Effect of the rule *rugi laba tempat semenda*.

(Note.—This is described as an application for withdrawal of a caveat but the Record contains no reference to any file or title and the caveat in question is not in the volumes of registered caveats for the years 1909—1912; it would therefore appear that the proceeding was in reality an enquiry into an objection to a proposed transfer under the Customary Tenure Enactment. The following report contains a few supplementary details supplied by the parties themselves, who still live in the house in question—a house of considerable value. E.N.T.)

Nyai Ampar and her husband Amat purchased out of their joint earnings the land concerned in L. C. 29/11. (p. 258) from Tukang Rahman, a distant relative of Nyai Ampar, and also the ancestral land of Inah, *sanak ibu* of Nyai Ampar; Inah had no daughter and sold the land to go to Mecca—Nyai Ampar exercising her option as the first in priority; all this land was registered in Nyai Ampar's name. The couple built a house on the land bought from Inah, and also spent jointly earned money on agricultural improvements.

Subsequently the wife sought to transfer a half interest in all this land to the husband though there was never any question of a divorce; Impam (or Impun) the eldest daughter, and Langkar, a sister of Nyai Ampar, objected to the proposed transfer, (but according to Impam herself, and to Amat, both speaking many years after the event, the opposition really came from the Dato Mentri seeking to establish the *adat* in a matter not directly affecting himself).

For the applicant it was contended that the land was *charian laki-bini*, that the applicable rule of succession was *mati bini tinggal ka-laki* so that if the wife died the husband would succeed to the land, and that the daughters had therefore no right of inheritance on which to base their claim.

For the objectors it was contended that the wife could not in any event transfer any property to the husband during the marriage, that the rule is *mati bini tinggal ka-laki kalau tiada anak perempuan atau waris kadim perempuan* (i.e., that the widower could only succeed to such property if there were no daughters or near female relatives) and that even if there were no issue the widower could not to succeed to land bought from the wife's own tribe but could merely recover from her *waris* the sum actually expended from the *charian* without any allowance for agricultural improvements.

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It was agreed that the rule *rugi laba tempat semenda* applied.

Eventually the Collector framed issues:—

- (a) If the wife's *pesaka* is purchased with joint earnings, what is the husband's position with regard to the children?

As to this the five *lembagas* who gave evidence agreed that the husband can only recover the actual amount of cash expended from the *charian*, without any allowance for agricultural improvements the balance is retained by the children.

- (b) If the husband erects a house on the wife's tribe's land bought with the *charian*?

The *lembagas* agreed that the husband must sell to the children, (at a price assessed by the *ibu bapa*) and cut his loss if the valuation be less than the market value of the house.

H. E. PENNINGTON Esq., *Collector Rembau*:—"The Datohs are agreed that the applicant has no right to give to the husband."

### Commentary.

Much of the discussion related to the rule *mati bini tinggal ka-laki*; that portion is not reported because judgment was not given on that issue, and later cases have settled the application of that rule.

There is however no other case in which a Collector has investigated the question:—"What is the rule of devolution of property bought from the wife's own tribe with *charian laki-bini* money?" This case cannot be said to decide that question but it does throw some light on the matter.

The *lembagas* were clear that the husband could claim no compensation for the trees he planted on such land, so they clearly regarded the land as ancestral *dapatan* for that purpose.

The question as to the house goes down to the roots of the *adat*. If the wife dies the widower will probably marry again, and the new wife will normally be of a different tribe to the former wife; it would violate the fundamental principle of the integrity of the tribe to bring a woman to settle on the ancestral land of another tribe; consequently the widower cannot retain the house *in situ*, and it has never been suggested that he can take it away (as to this point see page 62). The *lembagas* insisted, however, that the widower can recover from the former wife's tribe some compensation for a house on bought land; the Record shews that the Collector doubted this; it is plainly inconsistent with their view as to the trees, and they gave no reason for the distinction; it appears from the reasoning in *Ungkar v. Sichik* (p. 220) that the Collector was right, and that the five *lembagas*, though unanimous were wrong, on that issue, but the point cannot be said to be settled. E.N.T.

**In re the marriage of AMUN and SOMAH.**

14th July, 1928.

*Orang semenda pada tempat semenda*; the position of the husband as against the wife's relations considered.

Before the litigation arising out of Puan's affairs (p. 149 *et seq.*) was concluded Amun became involved in a dispute with his next wife's family. They provoked him into divorcing Somah, who was very young, and when he sought to return (*rojok*), her mother locked Somah up and refused to allow Amun to have access to her although, as Amun alleged, Somah herself was willing to resume conjugal relations.

Amun applied to the *Kathi*.

The *Kathi* referred the difficulty to the Assistant District Officer.

Amun appeared—Somah was not present, no process having been issued.

E. N. TAYLOR Esq., A.D.O. Rembau, delivered oral judgment:—

"The *Kathi* cannot register *rojok* because obviously that has not occurred; no other point of Muhammadan or Statute Law arises; the real issue is an issue of *adat*.

There are three courses ordinarily open to a Rembau husband, *viz*:—

- (a) to live with his wife in her mother's house;
- (b) to build a house for her on her ancestral land;
- (c) to divorce her;

his true duty is to adopt the second course.

In this case the first course has been tried and has proved impracticable; as the husband is unwilling to allow the existing provisional divorce by *satu talak* to become absolute by effluxion of *edah* his remedy is to apply to the wife's family for a site; failing agreement he can call upon the wife's *lembaga* to award a fair share of the ancestral *kampung* on which he may build a house; if he is unable or unwilling to do this the divorce will automatically become absolute."

**Commentary.**

This case is only one of many, all of which were decided on the same principles.

In one instance where both parties appeared, together with their respective *waris* and *lembagas*, the husband proposed a fourth course,

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*viz.*—the wife to go and live with him at the garage where he worked, but this was held to be unreasonable as the wife in question was too young to live at a distance from her family; the husband's friends advised him to submit to the A. D. O.'s opinion and he pronounced the divorce then and there.

Policemen, however, frequently take their wives to live in barracks at distant stations where they commonly pawn the *dapatan* jewellery, as in *Nyachik v. Ali* (p. 100); such wives have no effective way of enforcing their decrees as policemen seldom own property and their wages cannot be attached. E.N.T.

## TIANO v. SI-ALUS.

*Land Case 81/26.*

Property given to an infant by his parents is classed as *charian bujang*, and becomes *harta pembawa* on his marriage.

In 1912 Ma'ali and Tiano, being married to one another, applied for a piece of land and it was alienated and registered in the name of their son Jasin, then an infant of about ten years. About 1917 Jasin married Si-Alus, and they enjoyed the rents and profits; they had a daughter and two sons. In 1922 they paid additional premium and a new title permitting the planting of rubber was issued to Jasin in exchange for the original title. In 1926 Jasin was fatally assaulted.

Tiano claimed that the land was *charian laki-bini* of herself and Ma'ali and ought therefore to be transmitted to her (Ma'ali having died about 1919.)

Si-Alus claimed that the land should be transmitted to her "because she had to maintain the children."

E. N. TAYLOR Esq., *Collector, Rembau*:—"The rule is *mati laki tinggal ka-bini* (subject possibly to trusts for daughters) and on this basis Tiano's is a reasonable claim but the great fact of registration is against her. From this, and from the subsequent long period during which Jasin exercised all the privileges and shouldered all the responsibilities of ownership, I conclude that the real intention of Tiano and Ma'ali was not to acquire this land for themselves but to acquire it for their son Jasin and settle it on him. Jasin having since been murdered I hold that his widow is entitled to succeed; it is a question whether or not a caveat should be entered to protect the infant daughter's interest, and I reserve this point.

\* \* \* \* \*

On consideration I come to the conclusion that the person really entitled to succeed to this land is the daughter, and that Si-Alus has no right of her own."

He accordingly transmitted the land to Si-Alus as trustee for the infant daughter.

Tiano appealed, on the ground that the land was *harta pembawa* of the marriage of Jasin and Si-Alus and should therefore return to her, Jasin's mother.

In the Statutory Report the trial Collector explained his reasons for holding that the daughter was entitled, and continued.... "It is nevertheless arguable that this land was *harta pembawa* of Jasin. It was given to him as a gift and it is a question whether this is equivalent to acquisition, *i.e.*, *charian bujang*.....but assuming

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that the land was originally *harta pembawa*, and that Tiano would succeed to it, yet it is common ground that Si-Alus and Jasin paid for the conversion of title which is indisputably capital expenditure and confers on the land a characteristic of *charian laki-bini* of Jasin and Si-Alus; this would entitle Si-Alus at any rate to a share in it."

B. W. ELLES Esq., *Commissioner of Lands* and Inche ABDUL-LAH bin HAJI DAHAN, *Undang of Rembau*:—"Tiano's appeal must succeed. The land was from the first in the name of Jasin. He held it before marriage—*charian bujang*—and it must be treated as *harta pembawa* and return to his mother on his death.

Appeal allowed."

### Commentary.

Both decisions were wrong.

The Collector was right in rejecting Tiano's own argument that the land should rank as her *charian laki-bini* but his reasons (not reported here) for deciding in favour of the infant daughter were bad.

The Commissioner and *Undang* were wrong in ignoring the portion of the Report which is quoted above.

The truth is, of course, that the land should have been divided, a share returning to Tiano in consideration of its origin (*pembawa kembalek*) and the balance remaining with Si-Alus in consideration of the increase in value (*untong*) which was *charian laki-bini* of Si-Alus and Jasin.

The difficulty was that this principle is never mentioned by Parr and Mackray (it may, indeed, have been developed since their time) and *Napsiah v. Samat* (p. 83) had not been unearthed at the date of this trial. Previous Collectors were equally unacquainted with the rule (*Re Mat Sih dec.*, p. 98); there is no case in which it was judicially applied between *Napsiah v. Samat* (*supra*) in 1917 and *Re Abdul Hamid dec.* (p. 86) in 1927, but *Imai v. Talib* (p. 84) shews how the custom may operate without recourse to litigation.

**Re JAAMAN, (an infant.)***Land Case 114/27.*

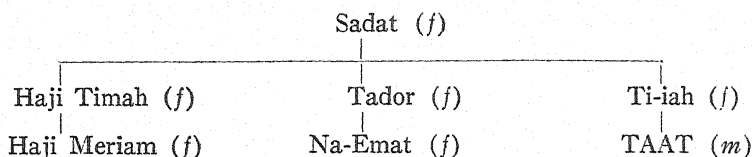
Land "settled" on an infant during minority ought to be registered in the name of the *waris*.

This was an application under § 9 of the Customary Tenure Enactment, 1926.

A petition having been submitted for relief from a special condition prohibiting the planting of rubber, the Resident approved the issue of a new title free of such condition, on surrender of the former title and certain payments. The title was registered in the names of two brothers; one was a small boy not competent to execute the necessary surrender, and the elder brother prayed for transmission.

E. N. TAYLOR Esq. *Collector, Rembau*:—*held*, that petitioner also was a minor and *ordered* transmission to their mother.



**Re TAAT dec.***Land Case 95/27.**Charian bujang* becomes *pesaka* on reversion to the *waris*.

Taat died on pilgrimage leaving one lot of land which was *charian bujang*. Haji Timah claimed the whole of this land, because (she said) Taat had said that she could have it and had given her a *kuasa* (see page 271). This document was an ordinary Power of Attorney, enabling Haji Timah to draw the coupons on the land during Taat's absence—it expressly withheld power to deal with the land. Haji Timah's *lembaga* said that *charian bujang*, becomes *pesaka* on reversion to the *waris* but he contended that Haji Timah was more nearly related to the deceased than Na-Emat and should therefore have the whole; he admitted that Na-Emat would be entitled to half after Haji Timah's death. He cited *Re Imah dec.* (Land Case 334/24, since over-ruled). Na-Emat claimed half the land, admitting Haji Timah's claim to the other half.

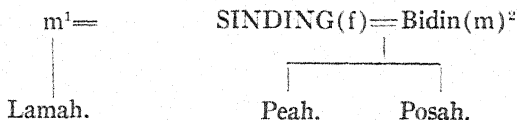
An independent *lembaga* thought that the division should be made forthwith, pointing out that it would otherwise be difficult for Na-Emat to recover half against Haji Timah's daughter.

E. N. TAYLOR Esq., *Collector, Rembau*.—"The argument that Haji Timah is "nearer" is based on a misunderstanding of Imah's case, in which the real point at issue was whether the two younger claimants were near enough to succeed at all."

Here it is admitted that Na-Emat is near enough and will succeed eventually in any case. In contemplation of *adat* the claims are really derived from Sadat. They are both equally distant from the nearest common ancestress and in my opinion the land should be divided equally between the two *perut*—half to Haji Timah and half to Na-Emat."

*Note*.—The judgment is perhaps not quite clearly expressed.

It would be more accurate to say that Haji Timah and Na-Emat were equally entitled to succeed to Taat, because the nearest common ancestress of each of them and Taat was the same person. See also *Re Siti Ensah dec.* p. 199. E.N.T.

**Re SINDING dec.***Land Case 126/24.*Devolution of *charian janda* is to all the daughters equally.

Sinding had a daughter Lamah by her first husband, and two daughters Peah and Posah by her second husband, Bidin, who divorced her. After the divorce Sinding bought from another tribe ancestral *kampong* and *sawah*.

Peah and Posah claimed to succeed, to these lands which they said, represented Sinding's share of the *charian laki-bini* of Sinding and Bidin; they resisted the claim of their sister Lamah who contended that the lands were *charian janda* of Sinding and should be shared equally by her three daughters.

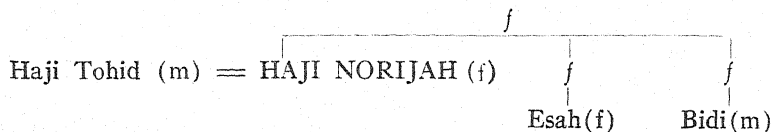
E. E. PENGILLEY, Esq., *Collector, Rembau*. "I am of opinion that the lands were bought by Sinding when she was divorced by her husband Bidin. On the divorce the *harta charian* was, in accordance with the custom, divided—each obtaining his or her share. I therefore think that Sinding herself bought these lands with her own money, and accordingly they should now on her death descend to all her three daughters equally."

Peah and Posah appealed.

B. W. ELLES, Esq., *Commissioner of Lands and Inche ABDULLAH bin HAJI DAHAN Undang of Rembau*:—"We find that the weight of evidence shows that the lands in question were bought at the time when Sinding was divorced and that there is not sufficient evidence to show that they were bought with Bidin's money. The order of the Collector is upheld."

**Re HAJI NORIJAH dec.***Land Case 57/26.*

A gift to a married woman ranks not as *charian laki-bini* but as *harta dapatan* and is inherited by her *waris*.



Bidi took up a small holding which he cleared and planted with rubber; in 1911 he was living too far away to look after it, and he therefore transferred it to Haji Norijah, his aunt; the transfer was expressed to be for natural love and affection; from this time the land was maintained by Esah, a niece of Haji Norijah (but not sister to Bidi) and by Esah's husband.

In 1926 Haji Norijah was murdered; she had no daughter and Esah succeeded to all her ancestral land, without dispute.

Esah claimed the land derived from Bidi, on the ground that it was a gift to the deceased.

Haji Tohid, widower of deceased, claimed it as *charian laki-bini*.

Bidi claimed it merely on the facts stated above.

Ali, the husband of Esah, claimed that the land should be transmitted to Esah because five years previously the deceased had promised to transfer it to Esah in connection with the financial arrangements for the pilgrimage of the deceased; in support of this contention he produced a draft transfer which had never been executed by the deceased.

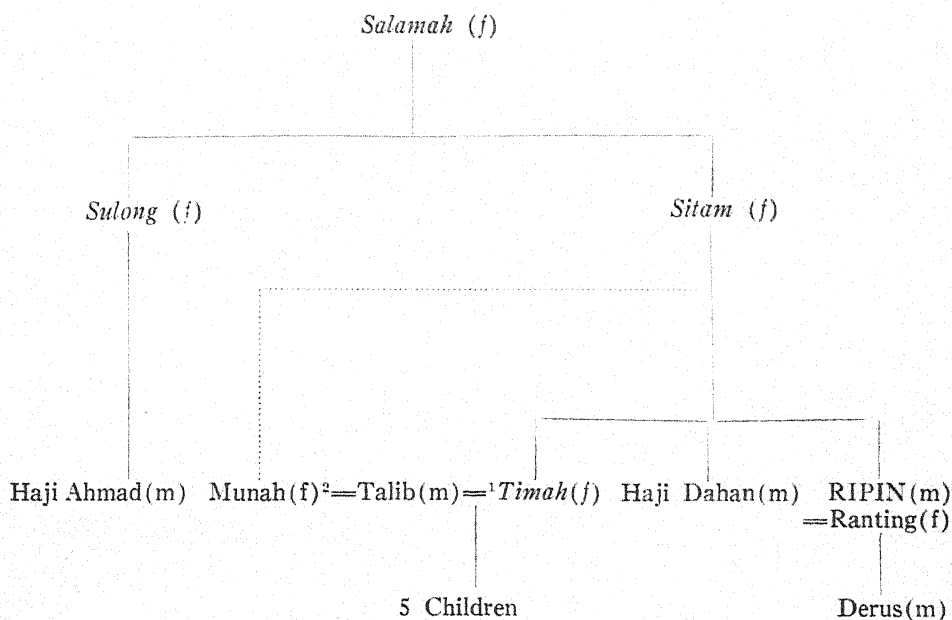
E. N. TAYLOR, Esq., *Collector, Rembau*:—"The land is clearly not *charian laki-bini*; it was given to the deceased as an unconditional gift. The husband suggests that the gift was to him and her jointly but the transfer does not indicate that.

Bidi has no claim to succeed to his aunt, or Tohid to his wife, according to the custom; I therefore transmit this lot to Esah in accordance with the custom; I am in no way influenced by the alleged promise to transfer it—it is clear from the lapse of time (five years) after deceased's return from Mecca that that promise, if ever made, was superseded by some other arrangement."

**Re RIPIN dec.***Land Case 154/27.*

A gift to a married man by his own family ranks as *pembawa* not as *charian* of the marriage.

(*Note.*—This dispute was connected with L. C. 154/25 (p. 233) the coincidence of the number is a curious accident.)



Haji Ahmad was unmarried, and lived with his *waris* Timah. E. 949 Gadong was alienated in 1911 to Haji Ahmad and Timah jointly, and was planted with rubber. Timah's half interest in the land was *charian laki-bini* of Talib and Timah, (L. C. 154/25 *supra*). For many years Ripin acted as manager of the land belonging to Talib and Timah but there was no evidence of the terms of this employment. In December, 1926 Haji Ahmad transferred the half share in his name to Ripin, for natural love and affection. Ripin died in September, 1927.

Ranting, the widow of Ripin, now claimed that this half share was *charian laki-bini* of herself and Ripin and should be transmitted to her accordingly.

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Talib claimed that Haji Ahmad had held the land merely as a trustee for him, Talib, and that the transfer to Ripin was covinous. He claimed that the whole of the land was in truth *charian laki-bini* of himself and Timah and that the half share in dispute, like Timah's half in L. C. 154/25, should be transmitted to Munah as trustee for the children of that marriage.

E. N. TAYLOR, Esq., *Collector, Rembau* (after dealing with the evidence of fact):—"I am not disposed to rely on the oral evidence. I apply the doctrine of the conclusiveness of registration of title and hold that the half share now in dispute was *charian bujang* of Haji Ahmad, was *harta pembawa* of Ripin's marriage to Ranting and must (*kembalek*) return to Ripin's *waris* now that Ripin is dead. Munah is Ripin's *waris* by virtue of the adoption (*Re Abdul Hamid dec. p. 86*) and I therefore transmit the land to her."

\* \* \* \* \*

(There was no appeal).

**MIAH v. SAFAR.***Land Case 21/12.*

*Harta pembawa* cannot be extinguished though it may change in form.

The plaintiff was the daughter of defendant and his wife Kepam. During their marriage defendant and Kepam purchased two lots of *sawah* land which were registered in defendant's name. Kepam died, and the plaintiff succeeded to her ancestral property. About six years later the defendant refused to give the plaintiff a share in the purchased *sawah*, whereupon the plaintiff brought this action claiming transmission of that *sawah* to herself.

The plaintiff had never at any time occupied the *sawah*.

The plaintiff averred that the land in dispute was bought out of the proceeds of buffaloes which descended to Kepam from her parents and was therefore *pesaka* of the plaintiff.

The defendant said that he had possessed \$150 *wang pembawa* at the time of his marriage to Kepam, that the land was bought out of this and was therefore not *charian laki-bini* and the plaintiff was not entitled to any share in it.

It was admitted that *pembawa* must be declared at, or shortly after, marriage and there was much conflicting evidence as to whether the \$150 in question was, in fact, declared.

The Dato Perba deposed:—

*"The adat is mati laki tinggal ka-bini, mati bini tinggal ka-laki, and regarding cherai,—chari bahagi, dapat tinggal, pembawa kembalek."*

H. E. PENNINGTON, Esq., *Collector, Rembau*:—"The adat clearly gives the defendant the right to the land, *mati laki dapat ka-bini, mati bini dapat ka-laki.*"

Miah appealed, and at the hearing called three witnesses as to the custom.

The Dato Mentri Jahaya said. "If the property is *pencharian* it goes to the survivor—that is, on the death of the wife, to the husband and on the death of the husband, to the wife—but if the wife dies, although the children get no share, the husband must provide for them."

The Dato Bandar Sail said. "In the case of *pencharian laki-bini*, if the mother dies the property goes to the children—so also if the father dies."

The Dato Gempa Maharaja said. "In the case of *pencharian*, if the wife or husband dies the property is divided between the surviving parent and the children."

Called for the defendant the Dato Perba concurred with the Mentri as to *pencharian*, but he said that Kepam had admitted both the existence of the *pembawa* and the fact that it was declared at the time of her marriage.

The Hon. Mr. A. H. LEMON, *British Resident*:—"It appears to me that there is a certain amount of evidence regarding the *pembawa*, and as the *pembawa* cannot be extinguished I consider that the land may be regarded as bought from it in the absence of proof to the contrary and must go to Safar.

Appeal dismissed."

## NIAH v. MOHAMED ALIAS.

*Land Case 86/19.*

On the death of the wife where there is no issue of the marriage, the whole of the *charian laki-bini* property devolves on the husband but subject to the payment of the funeral expenses.

The husband is not entitled to any compensation for improvements made by him to his wife's ancestral property.

Singah (m)<sup>1</sup>=SIANOH (f) ==<sup>2</sup> Mohamed Alias (m)  
Niah(f)

Sianoh had one daughter Niah, by her first husband, but no issue by her second husband, Mohamed Alias; she left several lots of ancestral land of which one, E. 232 Nerasau was planted with rubber by Alias during the second marriage; the *charian laki-bini* of the second marriage consisted of two lots of land one, E. 930, in the name of Sianoh, and one in the name of Alias. Niah paid all the expenses of Sianoh's illness and funeral.

Niah claimed all the land registered in the name of Sianoh.

Alias contested the claim on the grounds that he had planted E. 232, and that E. 930 was *charian laki-bini*.

G. A. de C. de MOUBRAY, Esq., *Collector, Rembau*:—  
“The essential fact is that all the pieces of land except E. M. R. 930 are admitted by all parties to be *tanah pesaka*, which I take to mean in this case ancestral land held under the custom.

There can be therefore no doubt whatsoever about E. M. R. 232, the custom being that the husband can have no claim to compensation for improvements made by him to ancestral property.

With regard to E. M. R. 930 I have taken the point of view that the most favourable argument for the objector is the one which he urges, namely that following the Rembau marriage custom the whole of the *charian laki-bini* should be divided equally on *cherai*. As it is admitted by all parties that the *charian laki-bini* was already, before the *cherai mati*, registered in equal parts in the names of the two consorts the objector can have no further claim to the half registered in the deceased's name, which according to the custom must descend to the female heirs.

If he chooses to press the question of payment of funeral expenses any further I think he will lay himself open to having the land already registered is his name taken from him.”

The Collector accordingly transmitted all the land in the name of Sianoh to Niah.

Mohamed Alias appealed.



The Hon. Mr. W. J. P. HUME, *British Resident* and HAJI SULONG, *Undang of Rembau*:—"E. M. R. 930 is *charian laki-bini* and is to be transferred to Mohamed Alias, the husband of the deceased owner, so soon as he shall have discharged the expenses of the deceased's funeral which are chargeable to the *charian laki-bini* in this case—the Collector to take an account of the said expenses with the parties, and to see that they are paid before execution of the transfer."

### Commentary.

The Collector did not appreciate that "issue" means "issue of the marriage"—not "issue of the woman"; compare *Re Kulop Kidal dec.* (p. 89) where Mahani was in exactly the same position as Niah, and contrast *Senai v. Kesah* (p. 120) where the step-daughter succeeded because the husband died first. E.N.T.

**NAPSI AH v. SAMAT.***Land Case 129/17.*

If *harta pembawa* increases in value during marriage, the increase (*untong*) ranks as *charian laki-bini*.

The parties were wife and husband respectively, they had four lots of land but the dispute related only to two, of which one was registered in the name of each party; all were bought during the marriage but Samat had had \$200 *wang pembawa* and the lot in Napsiah's name had been bought out of that sum, for \$160.

Napsiah claimed division on divorce and the matter was referred through the *lembagas* to the *Undang*, who held:—

- |                                     |    |              |
|-------------------------------------|----|--------------|
| (1) that the disputed lot was worth | .. | \$300        |
| (2) which included <i>pembawa</i>   | .. | \$160        |
| (3) leaving <i>untong</i>           | .. | <u>\$140</u> |

and that the *untong* ranked as *charian laki-bini* and fell to be divided on divorce.

The *Undang* accordingly directed Napsiah to transfer this lot to Samat, on Samat paying \$70, being her half of the *untong*; he also directed Samat to transfer to Napsiah a half share in the other lot.

Samat paid the \$70 and Napsiah duly conveyed half the first lot to him, but he failed to convey half the second lot to her.

Napsiah therefore brought this action under the Land Enactment claiming transmission of half the second lot.

Samat contended that the lot in question, *i.e.*, the second one, was also *pembawa* but the dates of the registered documets negatived this and

W. R. BOYD, Esq., *Collector, Rembau*:—transmitted a half share to Napsiah as prayed.

**IMAI v. TALIB.***Same v. Same.**Civil Suits 64 and 76 of 1927, consolidated.*

The Court of a Magistrate has jurisdiction to determine suits for specific performance and declaration suits.

The principle of *untong* has been recognised and acted on in practice, without litigation.

Talib sought to sue Imai:—

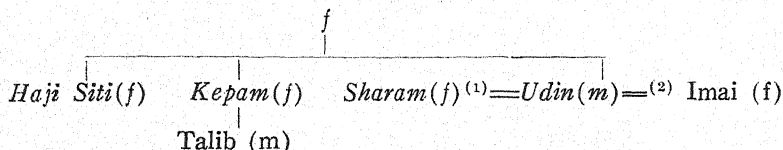
- (a) for a declaration that the plaintiff was the beneficial owner of a one-third share in E. M. R. 1402 Tanjong Kling;
- (b) for specific performance of an agreement to transfer the said share;
- (c) for an order on the defendant to execute a transfer of the said share;

and in the alternative—for \$400.

The plaint was filed in the Supreme Court.

ACTON J., ordered the plaint to be returned as the suit had been instituted in a Court higher than the Court competent to try it.

The suit was accordingly re-instituted in the Court of the Magistrate at Rembau, and was consolidated with a connected suit between the same parties. The facts sufficiently appear from the following extracts from the judgment of the trial Magistrate.



E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"In the year 1913 Udin and his wife Sharam acquired from Government about three acres of land, and in due course E. M. R. 1402 Tanjong Kling, was issued in the name of Udin; the land was their *charian laki-bini*.

Sharam died childless and thereafter Udin held the land on behalf of his own tribe (*Re Kulop Kidal dec.*) [p. 89]. Udin afterwards married Imai. The land was *harta pembawa* of this marriage, and on the death of Udin the applicable rule was *pembawa kembalek* meaning that the land returns to the tribe of the deceased husband, subject however to the qualification that the increase in the value of the land which took place during the marriage ranks as *charian*

*laki-bini* and the widow is entitled to a share thereof, assessable in the first place by the *ibu-bapa* and *lembaga*, and failing settlement by the Collector, (*Napsiah v. Samat*) [p. 83].

In this case it was arranged between the parties that one-third of the land was to rank as *pembawa* and *kembalek* accordingly to the sister of the deceased, and two-thirds were to rank as *charian* and *tinggal* to the widow. Imai then applied for transmission and obtained it unopposed, and immediately transferred the one-third to Haji Siti, as arranged and without further consideration. They arranged a private internal boundary between their shares but continued on the title as undivided co-proprietors."

[The rest of the judgment dealt exclusively with matters of fact and contract unconnected with the *adat*. An appeal was unsuccessful.]

**Re ABDUL HAMID dec.***Land Case 148/27.*

An adopted daughter is also the sister by adoption of the sons of her adoptive mother, and is their *waris*, and is entitled to succeed to their interests.

The *untong* on *harta pembawa* ranks as *charian laki-bini* and failing agreement is to be apportioned by the Collector.

Abdul Hamid was the *lembaga* of the *Batu Hampar* tribe (Patani division) and died in 1927 leaving a widow, an infant son, and three lots of acquired land. One of these was admittedly *charian bujang* originally and was to return to his *waris*, according to the rule *pembawa kembalek*; another was admittedly *charian laki-bini* with Mahawa, his only wife, and was to remain with her, *tinggal ka-bini*; the third lot, E. 561, was in dispute, the wife maintaining that it was jointly planted, and the family of deceased that it was *pembawa*.

Documentary evidence proved that the disputed lot was alienated in 1914, and that extra premium was paid on it, for permission to plant rubber, in 1916, and within a few weeks of the marriage; after oral evidence had been given that the rubber was actually planted about a year before the marriage Mahawa admitted that fact; this lot was valued at about \$800.

There was good oral evidence that Limah was of the same tribe and *perut* as deceased, and that she had been adopted in childhood by the mother of deceased, who had no natural daughters, and the mukim register proved that she had succeeded to her adoptive mother's ancestral land.

The evidence of custom was that such an adoption can take place without formality beyond a family feast, and that *untong* on *pembawa* land ranks as *charian laki-bini*.

E. N. TAYLOR Esq., *Collector, Rembau*.—"I hold that Limah is the true customary sister of deceased and entitled to E. 473 absolutely (*i.e.*, the *charian bujang* lot) and to E. 561 subject to compensation. Mahawa is clearly entitled to E. 668, with remainder to her son. It is clear that the parties cannot *pakat*, so the compensation must be assessed by the Collector, and I award her \$200 or alternatively a quarter share in the land, at Limah's option."

The parties agreed that Mahawa should have a quarter share.

**SINGAH v. SA'ABAH.***Land Case 173/27.*

To support a claim for *untong* it is necessary to shew that the property was materially improved in value, by the joint efforts of the married pair.

Amat was married to Singah in 1920. He already possessed a rubber holding which came into bearing in 1922.

Sa'abah sister of deceased claimed that the land should return to her, without any allowance for *untong*; she contended that the land was tappable before the marriage, but failed to prove it.

Singah, widow of deceased, claimed a share in the land by way of *untong*.

E. N. TAYLOR Esq., *Collector, Rembau*:—"The only question is whether the widow should have a share in the *pembawa* lot by way of *untong*, as in *Re Abdul Hamid dec.*, (reported at p. 86). It seems to me that the rubber was already so large at the time of the marriage, that no appreciable amount of work was necessary to bring it into bearing. I cannot see therefore, that any material proportion of the present value of the land can properly be regarded as *charian*, and I reject the claim for *untong*."

**LIMAH v. LATEH.***Civil Suit 283/28.*

If a *dapatan* buffalo has natural increase during marriage the increase ranks as *charian laki-bini*.

The parties were wife and husband respectively. The defendant sought to divorce the plaintiff but the two families were unable to settle the apportionment of the property, and pending decision of the dispute, the proceedings before the *Kathi* were stayed. The plaintiff possessed a cow buffalo which was admittedly *hartaapatan*; during the marriage the defendant had sold two of the calves.

The plaintiff said that these calves were *hartaapatan* and she claimed to recover the whole of the proceeds.

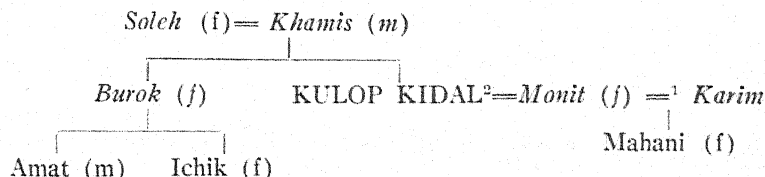
The defendant contended that the calves were born during marriage and that the proceeds therefore ranked as *charian laki-bini*.

Evidence of the custom was given by two independent *lembagas*.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"I find that the buffaloes sold were born of the *dapatan* cow and that they ranked as *charian*."

**Re DATO NGIANG KULOP KIDAL dec.***Land Case 18/27.*

The acquired property which a man retains on *jeput* is held by him on behalf of his tribe and on his death it devolves as *pesaka* on his *waris*.



Kulop Kidal was the *lembaga* of the *Mungkal* tribe and was married successively to nine different women; by the earlier marriages he had a daughter, Pisah, and several sons of whom Sudin was the eldest. The sixth wife was Monit, of the Seri Melenggang tribe, who already had a daughter, Mahani.

In 1912 Kulop Kidal and Monit jointly acquired 4 acres of land under E. M. R. 639 Batu Hampar which was registered in both names and inscribed Customary Land; they planted this with rubber; they had no issue; Monit died in 1920; Mahani succeeded to her ancestral land, and Kulop Kidal to her half share in E. 639.

The seventh and eighth wives were divorced childless; the ninth wife was Tibat, the sister of Monit; this marriage also was childless but subsisted until the death of Kulop Kidal in 1926.

Soleh and Burok were already dead, and Ichik applied for transmission of the whole of the land.

Mahani contested the application on the ground that deceased only took a life-interest in Monit's half with reversion to her, the daughter of Monit.

Tibat and Pisah opposed the application generally, and adversely to one another, but on no stated grounds.

Sudin contested the application on the basis of a purported will—a different one from the one propounded in A. P. 106/26 (p. 92).

Sudin also applied for cancellation of the inscription "Customary Land," but this application was dismissed.

It was proved that the deceased was in fact *jeput* after the death of Monit.

[The Collector held that the will was not duly executed and was in any event void as inherently opposed to the Custom; this portion of the judgment is not reported, in view of the subsequent judgment of Acton, J. reported at p. 92].



E. N. TAYLOR, Esq., *Collector, Rembau*:—"The facts are clear. It is admitted by all parties and proved by the registered documents beyond any possible doubt that the land was *charian laki-bini* of Monit and deceased, that Monit died first and childless, and that deceased succeeded to her. The land is therefore clearly *harta pembawa* and as such (*kembalek*) returns to the tribe; no one disputes that petitioner is the nearest female relative in the tribe. I therefore give judgment for the petitioner as prayed and:—

*Order that E. 639 Batu Hampar be transmitted to Ichik binti Haji Jahaya."*

Sudin appealed, and Mahani attempted to appeal out of time and without leave.

The Hon. Mr. B. W. ELLES, *British Resident*, and Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—"Mahani did not appeal in time against the order of Collector in favour of Ichik and we are not called on to decide whether her claim should have succeeded but it may be as well to state that we do not consider that her claim was valid. We are of opinion that Sudin cannot succeed. His claim rests solely on the will and is contrary to the *adat*.

We are very doubtful if it was possible for Sudin in any case to have succeeded in his application under section 3 of the 1926 Enactment as it was made after the death of Kulop Kidal and his claim was that the endorsement "Customary Land" should have been cancelled when the land still belonged to Kulop Kidal. Even if the land had not been endorsed "Customary Land" we think that the evidence is sufficient to show that the land was held by him subject to the custom. It was originally acquired jointly by him and Monit during their wedlock. It was their *charian laki-bini*. Then Monit died and her share was transmitted to Kulop Kidal in 1920, apparently following the principle *mati bini tinggal laki*.

The evidence of Mat Aris bin Mahmood (successor in office of deceased as Dato Ngiang) is of the first importance. It is sufficient to prove in our opinion that after Monit's death deceased was *jeput* after the 100 days and this land was thereafter held by him on account of the Mungkal tribe.

The Order of the Collector was quite correct in our opinion being in favour of his nearest female relative in the Mungkal Tribe. The land was *harta pembawa* in respect of his subsequent marriage and as such returned to the Mungkal tribe on his death.

The claim of Mahani, who was a daughter of Monit by another husband, was rightly excluded at this stage."

*Notes.*

1. Mahani's claim would have been bad even if she had made it on the death of Monit. (*Niah v. Mohamed Alias*, p. 81).

2. Immediately after the hearing of the appeal Pisah's solicitor attempted to institute an entirely fresh proceeding on the curious basis that the land being " Customary " ought to devolve on Pisah. This petition was summarily rejected by the Collector on the ground that the matter was *res judicata* of the Court of last resort.

**Re DATO NGIANG KULOP KIDAL dec.**

*Rembau Administration Petition No. 3/26. ...* } *Consolidated.*  
*Seremban Administration Petition No. 106/26. ..* }

The *adat* Rembau—a person subject to recognised matriarchal custom cannot make a will.

The Dato' Ngiang Kulop Kidal bin Khamis was the *lembaga* of the Mungkal tribe, of Rembau, and died leaving a will, by which he purported to dispose of the whole of his property, to his widow, his niece, and his great-nephew, in equal shares; the estate consisted of one piece of Customary Land and sundry debts and chattels. The executor (the great-nephew) applied for probate; and the widow applied separately for letters of administration; these petitions being consolidated it was:—

*Held, per* ACTON J., that the will was duly executed but was nevertheless inoperative because the personal law to which the deceased was subject, was the *adat* Rembau, which has for many years been recognised in Negri Sembilan (*In re Tiambi binti Ma-Amin*, Innes on Land Registration, p. 285) and this governs the devolution of the estates of deceased persons subject to the *adat*, to the exclusion of wills, and

*Ordered* (a) that grant of probate be refused;

(b) that the land be dealt with by the Collector under the Customary Tenure Enactment 1926 and

(c) that the moveable property, being under \$3,000 in value, the widow's application for letters of administration be remitted to be dealt with by the Deputy—Registrar, Rembau.

[*Notes.*—This report was revised by the learned trial Judge, to whom thanks are due. R. S. C. 127/27.

Tiambi's case is reported at p. 57 *supra* E.N.T.]

## Re DATO NGIANG KULOP KIDAL dec.

*Seremban Administration Petition 106/26*

Moveable property in general devolves according to the same rules as land; *quaere* whether *chenderong mata* has any current meaning or effect.

The widow is entitled only to a limited grant of administration over the property which remains to her; the *waris* are entitled to administer what returns to them.

The relationship of the parties is fully stated in the report of Land Case 18/27, at page 89.

The moveable property fell to be administered before the Deputy Registrar, in accordance with the order (c) made by the Judge and reported at page 92.

The property set out in the affidavit included one gun, one charge over mukim register land and six promissory notes payable to the deceased and bearing dates some before, and some after, the date of the marriage to Tibat.

Tibat claimed "the share due to her as widow, under the *adat*"; she left it to the Court to determine that share.

Ichik claimed the *pembawa* property, and admitted that the widow was entitled to the *charian* of her marriage.

Pisah and Sudin vaguely claimed the *charian* and the *pesaka* respectively, but submitted no evidence or saying in support of their claims; in particular Sudin did not understand the expression *chenderong mata* suggested to him by the Court.

Several *lembagas* declared that money and chattels, and also weapons, devolve according to exactly the same rules as land: they had never heard of *chenderong mata*. Sudin's own *lembaga* denied that the sons had any claim. Only one witness, an independent *lembaga* whom the Court considered trustworthy, understood *chenderong mata* and he said that that expression denoted an exception to the ordinary rule; this exception, he said, could operate in this case to entitle Sudin to succeed to a weapon, if there was one, which was originally *charian laki-bini* of deceased and Sudin's mother. Sudin, recalled, stated that the gun in question was acquired after the death of his mother.

E. N. TAYLOR, Esq., *Deputy Registrar, Rembau*:—"The numerous persons interested in this case resolve themselves into three parties, *viz*:—

Tibat	..	..	the widow,
Ichik (and others)	..	..	the <i>waris</i> ,.
and Sudin (and others)	..	..	the sons and daughter,

The property also consists of three main portions, *viz*:—

- (a) the land and coupons,
- (b) the weapons
- and (c) the securities.

2. The land is no longer part of the subject matter of this petition; the coupons must follow the land. It is clear that no coupons have been issued so as to fall into the estate which is the subject-matter of this adjudication; if it should be found later that the wrong party has had them, the matter can be adjusted out of the future issues, as the Resident (before whom an appeal as to the ownership of the land is pending) may direct. I therefore order that the item of \$135/- on account of coupons be deleted from the schedule of property to be distributed.

3. I was at first inclined to think that Sudin and Lajis might be entitled to the weapons, (*vide* Parr and Mackray at p. 69) but it is clear from the evidence of the *lembagas* that they are not so entitled. Sudin was clear that he could not claim the gun on this ground. Groups (b) and (c) are therefore amalgamated.

4. It is therefore necessary to decide how this property is to be distributed; the only guidance readily available, apart from the evidence given in this case, is contained in Parr and Mackray, who, as text writers, cannot be regarded as a conclusive authority binding on the Court, more especially since they do not purport to be writing a legal treatise and do not deal exhaustively with the subjects they mention. They were, however, both officers of considerable judicial experience of the Rembau *adat* and their authority, though not conclusive, is great. The principal difficulty is that nowhere do they mention the rule *mati laki tinggal kapada bini* though that is a well-known rule, which appears in the oldest recorded cases I have been able to find, and which was affirmed by the Resident in a land appeal in 1913. I therefore enquired most particularly of the head-men who gave evidence whether moveable property follows the same rules as land. Their evidence is clear and I hold with confidence that the ordinary rules of succession to land under the *adat*, also govern the devolution of moveable property. This finding makes available the decisions of the Resident, or Commissioner of Lands, and the *Undang* in land cases depending on the *adat*, which are real authorities on which reliance can be placed. The rules which apply to this dispute are:—

- I. (As to *charian laki-bini*) *Mati laki tinggal kapada bini*.  
(This rule is subject to qualification where there are children, but deceased and Tibat had no children, so the simple rule suffices for this case) and
- II. *Pembawa kembalek*.

The authorities for these rules are, as to the first, *Hassan v. Romit* [reported at page 63] and many other cases, and as to the second, Parr and Mackray at page 76 and *Tiano v. Si-Alus* [reported at page 71] and other cases.

The effect of these two rules is simple.

- A. All the joint property which was acquired by deceased and Tibat during their marriage remains (*tinggal*) to Tibat, the widow, and
- B. All the property which deceased had acquired before his marriage to Tibat—and was therefore brought (*pembawa*) by him to that marriage—returns (*kembalek*) to his nearest female relative on his mother's side who is, *ipso facto*, his nearest female relative in his tribe (compare the Customary Tenure Enactment, 1926. Sect: 3 (vi).) His mother and sister being dead, the nearest female relative is his sister's daughter, Ichik.

I therefore decree two separate limited grants of L/A, one to Tibat the widow, and one to Ichik the maternal niece, the former limited to the joint property A, and the latter to the brought property B, each grant to be accompanied by a schedule of the assets to which it is limited.

5. That disposes of the main question. I carefully explained the decision to the parties and their respective headmen, in Malay, and they all said they clearly understood it; the two administratrices and their friends also said they were satisfied, but Sudin, and his sister Pisah, are not satisfied and have applied for appeal documents.

As it was decided by the Judge that the law which governs this case is the *adat*, and as the tribal headmen, including Sudin's own *lembaga*, are unanimous that Sudin has no claim, I have only to add on this issue that though I have made a special study of the *adat*, I know of no rule or provision by which he could possibly succeed (except to the weapons—and that point is already dealt with.)

[No appeal, however, was ever lodged].

### Commentary.

1. This is the only case in which the issue of *chenderong mata* has been raised; though many witnesses were examined only one could attach any meaning to the expression. If he was right it denotes a remarkable exception to the ordinary rules. Presumably Kulop Kidal was *jeput* after the death or divorce of Sudin's mother, as he was proved to have been after his much later marriage to Monit; presumably, therefore, the *charian* of that marriage was divided according to the custom; what he retained as his share was 1929] *Royal Asiatic Society*.

therefore *pembawa* of all the subsequent marriages, and would ordinarily revert to his *waris*, as stated in the appellate judgment in the land case (*supra*, p. 90). As none of the other witnesses had ever heard of the expression it would appear that the exception, whatever it may have been, has fallen into desuetude and that weapons now follow the ordinary rules.

2. The reason why questions of moveable property have so seldom arisen is to be found in a peculiarity of procedure. For at least 25 years transmission of mukim register land has almost invariably been decided under the Land Enactments, and the moveables, which are usually unimportant, have been distributed without any legal process at all.

3. The issue of the two separate grants of letters of administration, each limited to specified assets, is really equivalent to the far more intelligible and convenient order for distribution under the new procedure which had not come into force at the date of this trial and is not yet applicable to such cases. (See also note on *kuasa* at p. 271 *infra*). In the future, probably, questions of moveables will arise more frequently and much new information on *chenderong mata* and kindred topics may be forthcoming. E.N.T.

**Re MAT SIH dec.***Land Case 195/24.*

The devolution of acquired property depends on its origin and history; the register is not conclusive and may be rectified.

The facts sufficiently appear from the judgment of the trial Collector.

E. E. PENGILLEY, Esq., *Collector, Rembau*:—The facts in this case are a little complicated and for the sake of clearness it will be best to set them out briefly. Mat Sih bin Rasat was first married to Sinah binti Usop and during this marriage they acquired a piece of land known as E. M. R. 700 Gadong. In course of time Mat Sih divorced Sinah and in accordance with custom their acquired property, the *tanah charian laki-bini*, was divided and E. M. R. 700 was subdivided into 1033 and 1034 each being registered in the names of both co-owners. The necessary cross transfers to arrange the names correctly in the register were never made. Mat Sih later married a second wife Elan binti Yatin, and then died.

2. After his death his first wife, Sinah, laid claim in Land Case 83/24 to Mat Sih's half of E. M. R. 1034 and expressly disclaimed his other land. There was no objection to her claim which was allowed. This then was her share of her *charian laki-bini* with Mat Sih; the other half of the original title E. M. R. 700, *viz.*, E. M. R. 1033, thus belongs in reality to Mat Sih, and Sinah has no claim although she is registered as owner of a half share. I have had the parties before me twice and I think the best way to straighten matters out will be to rectify the register under Section 40 of the Land Enactment which I accordingly propose to do.

3. Mat Sih thus died possessed of the whole of E. M. R. 1033 and half of another piece of land E. M. R. 1059 acquired by him during his second marriage with Elan. About this second piece of land there is no dispute and I have ordered its transmission to Elan binti Yatin as sole owner.

4. I now return to E. M. R. 1033 which is claimed by

- (a) Elan, the second wife, on the ground that her deceased husband told her she could claim it, and
- (b) Rumpit, his sister, on the ground that it is *harta pembawa* and should accordingly revert to his female relatives.

5. The land clearly falls within the definition of *harta pembawa* given in para 2 page 76 of Parr and Mackray's book on Rembau, *viz.*, "Property which formed his share of the joint earnings of an earlier marriage" and, as such, on the owner's death it "descends to his mother's family."



6. I am therefore of opinion that the sisters claim to E. M. R. 1033 is a good one and accordingly order transmission of E. M. R. 1033 Gadong registered in the name of Mat Sih bin Rasat to Rumpit binti Rasat."

*Note.*—In her evidence Elan said. "I was allowed by my husband to claim E. 1033 because we both worked the land." The Collector took no notice of this though it was really a sound argument, for Elan was entitled to a share in land that was *pembawa* in origin, if by their joint labours she and her husband had enhanced its value. (See also the note to *Tiano v. Si-Alus* at page 72).

## MINAH v. MAT DAHAN.

*Land Cases 279/24 and 130/25. C. L. 414/25.*

A wife can claim to be registered as owner of half the *charian laki-bini* land whether she is divorced or not.

This was a reference by the Collector to the Commissioner of Lands.

The parties were wife and husband respectively but owing to disputes they had been living apart for several years, and there had been some abortive litigation between them. After an enquiry by seven *lembagas* it was recorded in writing that five lots of land registered in the name of Mat Dahan were *charian laki-bini*. Later Mat Dahan sought to transfer these to third parties and Minah brought an action under the Land Enactment claiming a half share in each of the five lots; the Collector referred for the decision of the Commissioner, the question whether the action lay.

J. S. W. REID, Esq., *Collector, Rembau*:—"... the contention seemed to be that because she was not divorced she had no right to claim a half share. Naturally enough Mat Dahan has refused to divorce her, although he has abandoned her for four years, and she cannot claim her divorce from him.....

If an undivorced woman cannot claim her half share of *tanah charian* then it would seem that unscrupulous husbands can reduce the *adat* of *charian* to a farce, by selling whenever and to whomever they please without reference to their wives.... Mat Dahan having secured the money for the transfer, has vanished."

B. W. ELLES, Esq., *Commissioner of Lands*:—"She can claim—an application of this sort, whether by a divorced or an undivorced woman, is not included in the ruling arising out of *Awee v. Ibrahim*. (I F.M.S. Rep. 274) *vide Haji Ramah v. Alpha* (IV F.M.S. Rep. 179)."

The claim was brought to trial accordingly. Evidence was given that the parties had then been divorced but that this made no difference to the shares, and that it is contrary to the custom for *tanah charian* to be sold before the divorce, unless with the consent of both parties.

J. S. W. REID, Esq.—*Transmitted* a half share in each lot to Minah, as prayed.

**NYACHIK v. ALI.***Civil Suit 93/27.*

If the husband squanders the wife's *harta dapatan* without her consent, she can sue for it even during the marriage.

The defendant was a police constable stationed at Matang, Perak; the plaintiff was his wife; both were Rembau Malays. The plaintiff possessed *harta dapatan* consisting of jewellery given to her by her father before her marriage. Immediately after the marriage the defendant returned to Matang and a few weeks later the plaintiff was escorted as far as the defendant's mother's house by her own family and was then wearing her jewellery; the subject matter of the suit; the defendant's relatives escorted her to Matang.

Some months later the defendant brought her back to Rembau, and when her sister took charge of her (the plaintiff being very ill at the time) the jewellery was missing, and the plaintiff never recovered it.

The plaintiff sued for the return of her jewellery or its value.

Both parties disclaimed any intention to seek divorce. The Court took a preliminary point *viz.*,—whether in that event the action could lie, and called two independent *lembagas*; one thought that the *dapatan* could only be claimed on divorce, but the other said. "If a husband has used up the *harta dapatan* without the wife's consent she is entitled to sue, irrespective of divorce. On divorce the man must make good any *dapatan* whether she consented or not"

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"I prefer the opinion of the second *lembaga*; if there is any reasonable doubt the plaintiff must be given the benefit; a would-be plaintiff should only be non-suited on really clear grounds—(*Peck v. Russell*, IV. F.M.S. Rep. page 46.)"

The parties then called their evidence which was to the effect stated above.

The judgment on the merits was:—

"It seems to me that the plaintiff, with her jewellery, was safely delivered to the defendant's family and that the defendant is responsible for making proper arrangements for the safety of plaintiff during her coverture—she was constructively in his possession throughout—there is no suggestion that she was robbed or that she herself made away with it and no dispute seems to have arisen on the first visit to Rembau—I think defendant must have made away

with the jewellery at Matang—having regard to all the circumstances of the case that is my conclusion and I think defendant is liable to make good the loss. According to the Custom of Rembau a wife can hold separate property called *harta dapatan* and a husband has no rights in it. In this case the plaintiff was very much in his power—she is only a very young woman and was far away from her family—he was in a fiduciary capacity as regards her separate estate and is liable for waste.

I therefore give judgment for the plaintiff.”

**PUBLIC PROSECUTOR v. TAHIR.***Criminal Case 295/28.*

A husband may commit criminal breach of trust in respect of his wife's *harta dapatan*.

Tijah held ancestral land containing her house and also two acres of rubber land which was *harta dapatan*, being the half of the charian *laki-bini* of her first marriage allotted to her on divorce; she also possessed some jewellery. About the year 1916 she married Tahir; during this marriage she purchased further jewellery out of the proceeds of the *dapatan* rubber. In 1926 Tahir pawned some of the jewellery, with Tijah's consent, and bought timber to rebuild the house. Later, he hypothecated the title for the land to a chetty and redeemed the jewellery with the money so raised. When the chetty threatened to attach the land Tahir urged Tijah to pawn the jewellery again but she refused to do so. They kept the jewellery hidden in the wall of the house. Eventually, in 1928, Tahir took the jewellery without Tijah's knowledge or consent and pawned it; with the money he paid part of the debt to the chetty and recovered the title; after two or three days he arose in the night while Tijah still slept, forced the party wall where the jewellery had been concealed and displaced the steps of the house. Early in the morning Tijah's brother observed these signs and aroused the pair, whereupon Tijah discovered the loss of her jewellery. Tahir went to the police station and laid an information of burglary. The police traced some of the articles in a pawnshop at Seremban and proved that Tahir had pledged them. On this the couple quarrelled. Tahir restored the title to Tijah but did not divorce her because, as he said, he was not able to make good the rest of her *dapatan*; he simply left her. He went, in fact, to Trengganu.

The police then applied for, and obtained, a warrant for the arrest of Tahir, who was found in Trengganu and brought back to Rembau in custody. On 23rd October, 1928, Tahir was charged under the Penal Code with theft in a dwelling (§ 380), or alternatively with criminal breach of trust (§ 406), or alternatively with dishonest conversion (§ 403), of the jewellery.

R. Burns Esq. (*O. C. P. D. Tampin*) for the Public Prosecutor. The accused conducted his own defence.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"..... It is important to remember that in Rembau the social unit is not the person, or the family, but the tribe.

By the custom of Rembau a husband is in a fiduciary capacity for his wife's tribe in respect of her *harta dapatan* (*Nyachik v. Ali*) [p. 100] and if he disposes of it without her consent she can recover by action even during the marriage. This means that he is in

possession of such property and therefore he cannot be said to steal it but if he takes it away and disposes of it *animo furandi* I think he may be guilty of criminal breach of trust. The simulated burglary and the false report to the police are evidence of *mens rea*; accused himself says that since his wife would not consent he determined to dispose of the property by stealth without her consent and the mere fact that he used the money, or part of it, to pay a joint debt, if he did so use it, though it might perhaps be considered in mitigation of sentence, does not make the act an innocent one. In any case there is no real evidence of the use to which the money was put and on the accused's own statement a considerable portion is not accounted for and I am forced to conclude that he made away with it for his own private purposes, namely his journey to Trengganu. I therefore find him guilty of criminal breach of trust and fine him \$200, (or three months rigorous imprisonment.)"

The fine was paid.

Tijah afterwards sued Tahir and recovered judgment against him for the value of the *dapatan* jewellery. In this suit, as in the Criminal trial, it was admitted that the articles bought during marriage out of the proceeds of the *dapatan* land were *harta dapatan*. [C. S. 271/28.]

## SAUDAH v. SIMAN.

*Civil Suit 104/27.*

1. Apportionment of *charian laki-bini* property on divorce is by the tribal authorities in the first instance but their award is in the nature of arbitration only, and is not conclusive.

2. There is a rule of practice that the *Kathi's* certificate of divorce cannot be issued until all questions of property are settled, and if any question has been taken to Court, not without the leave of the Court.

3. The Court will not ordinarily grant leave in favour of a judgment debtor, unless he furnishes security for the satisfaction of the decree.

The parties were wife and husband respectively and had been married for eight years, and had one daughter aged three years. They had acquired one lot of land at a cost of \$50, registered in Saudah's name and a gun worth \$90. Both were *anak buah* of the Datoh Perba, and they went to him to apportion the property.

Saudah claimed \$40, being the value of two gold rings pawned by Siman, and also a sum of \$50 cash, both of which, she said, were *harta dapatan*.

There was a more or less formal trial before the Datoh Perba and evidence was recorded in writing. The Datoh awarded the land to Saudah, and the gun to Siman; he held that the *harta dapatan* was one ring only, valued at \$14, and that the \$50 was *charian laki-bini* and to be divided equally. He accordingly found that Siman ought to pay \$39 to Saudah, and he so informed the *Kathi* in writing, adding that Siman had agreed to pay that sum. When the parties appeared before the *Kathi*, however, Siman refused to pay the \$39 and a certificate of divorce was thereupon refused.

Saudah instituted a suit in the *Penghulu's* Court for \$39; the suit was removed into the Magistrate's Court for trial and at the first hearing the plaintiff said that if it were open to her to do so she wished to go on with the claim she originally made before the *lembaga*, viz., for two rings and \$50 as *harta dapatan*, total \$90.

E. N. TAYLOR, Esq., *Magistrate Rembau*:—"... I hold that she is not bound by the award of the Datoh—he is not a *Penghulu*, and has no powers under the Courts Enactment."

*Ordered* that a fresh plaint and summons be filed and issued.

After hearing further evidence the same Magistrate gave judgment as follows:—

"I hold that the plaintiff is entitled to recover \$40 for the rings as *harta dapatan* and \$50, which was given to her by her mother

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during the marriage and ranks as *dapatun*. I give judgment for the plaintiff for \$90 with costs."

Subsequently the case was the subject of a reference by the *Kathi* whose statement was recorded by the Magistrate as follows:—

"Defendant has applied to me to issue a certificate of divorce on the ground that the decree in the Civil Suit is a termination of the dispute. I declined because the decree remains unsatisfied but at defendant's request I refer the matter to the Court.

2. In my opinion the certificate cannot be issued till the decree is satisfied.

3. It is the settled practice in cases which do not go to Court to withhold the certificate not merely until any outstanding question of property is ascertained (*trang*) but until it is satisfied (*selesai*)."

The defendant stated that he could neither satisfy the decree nor furnish any security for its satisfaction.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"In my opinion the whole object of this rule of practice is to secure that all questions of money or property shall be finally disposed of before the certificate of divorce is issued; there are obvious reasons of public policy and convenience in favour of the rule.

2. It appears that there is a very salutary extension or corollary to the rule whereby if any dispute about property has been taken to Court the *Kathi* does not issue his certificate of divorce till the Court issues a certificate of satisfaction or gives special leave.

3. In this case the defendant has not satisfied the decree against him; he gives no reason why special leave should be granted and offers no security; his application is dismissed accordingly."

### Commentary.

The refusal of leave did not really affect the defendant because the man can marry again without the certificate. He wanted it because he thought its issue would prevent or obstruct execution of the decree and as it would not have had that effect it was better to refuse his application; to grant it would have deceived him.

Leave would, of course, have been granted to the plaintiff, (as in the next case) had she applied.



**SAWIAH v. JADI.***Penghulu's Civil Suit 50/27.*

The Court of a *Penghulu* is not competent to grant leave to issue a certificate of divorce while a decree remains unsatisfied, but on reference the Court of a Magistrate will grant leave in favour of the judgment creditor.

This was a reference by the *Penghulu* of Chembong, whose statement was recorded by the Magistrate as follows:—

- “ 1. Jadi divorced his wife, *tiga talak*.
2. Sawiah, the wife, applied to the *Kathi* to register the divorce and the *Kathi* adjourned the matter pending settlement of an outstanding question of money, namely a claim by the wife for \$10.
3. The wife obtained judgment for \$10 and costs but the decree remains unsatisfied. The period for appeal has expired.
4. The wife now desires to obtain her certificate of divorce and prefers to abandon her claim rather than endure further delay and expense in seeking to enforce the decree. The husband is ordinarily resident in Singapore but is domiciled in Rembau.
5. The question for the Magistrate is how can the suit be withdrawn at this stage, so that the plaintiff wife may obtain her certificate.?”

E. N. TAYLOR, Esq., *Magistrate Rembau*:—“ I am of opinion that the question of the debt is concluded by the decree of a competent Court, against which no appeal has been lodged (the period having expired.)

2. The decree remains and the holder can please herself whether she takes steps to enforce it or not.

3. If she does take steps after obtaining her certificate it will be open to the judgment-debtor to object that the certificate is a bar to enforcement but that point cannot be decided unless and until it arises.

4. I am further of opinion that it would be wrong for the *Kathi* in a case of this sort to issue his certificate without reference to the Court (meaning the Court of first instance) and that the Court of a *Penghulu* is not competent to give the direction; I therefore approve of the reference and on it I give judgment for the plaintiff for a declaration that this suit is no bar to the issue of a certificate of divorce, and I order that a precept to issue to the *Kathi* accordingly.”

## TIAH v. RIPIN.

*Civil Suit 106/27.*

*Harta dapatan* cannot be extinguished, though it may change in form.

On divorce, *cherai hidup*, each party is liable for half the joint debts.

Where a question of property remains outstanding on divorce the Court will grant leave in favour of a decree holder for the issue of a final certificate of divorce expressly preserving the right to enforce the decree.

The plaintiff's first husband bought jewellery for her out of their joint earnings; he died and she married the defendant. During this marriage some of the jewellery was sold, and other articles purchased in lieu. At various times the defendant pawned this jewellery to the total value of \$308; he also borrowed \$50 from the plaintiff's mother's brother and used the money for a private speculation of his own. Afterwards he divorced the plaintiff and she claimed restoration of her *harta dapatan*; the *Kathi* refused to register the divorce while this dispute remained open; the plaintiff now brought this action to recover \$308 on account of the jewellery and \$50 on account of the debt to her family, both of which she said were *harta dapatan*.

The defendant said that he had made many improvements to the plaintiff's house.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"Both the parties in this suit have conducted their cases in the most calm and restrained manner—a very marked contrast to that usually adopted by Rembau Malays, most of whom regard the opportunity to cross-examine as the most favourable one for vituperation especially between a married or newly divorced couple.

2. It is settled *adat* that neither *pembawa* nor *dapatan* can be extinguished—the fact that one article of jewellery has been exchanged for another is immaterial.

The husband is not entitled to any compensation for improvements to the wife's house—it is his duty to keep it in repair. I have no hesitation in holding that the plaintiff has proved her case, and find that defendant is liable to her for \$308 on account of *harta dapatan*.

3. I think the \$50 is properly to be regarded as a debt of the marriage outstanding on divorce, and that according to the custom the creditor can demand half from each party. I therefore award plaintiff \$25 on that issue.

Judgment for plaintiff for \$333 and costs."

A hundred days later the plaintiff applied for her final certificate of divorce, and following the rule in *Saudah v. Siman* (p. 104) the *Kathi* referred the matter to the Court. Leave was granted in the following form\* :—

C. S. No. 106/27.

*Magistrate's Court,*

*Rembau, 4th February, 1928.*

Kahadapan Tuan Kathi, Rembau.

Di-maalomkan yaitu berkena'an dengan bichara *Civil Suit No. 106/27* di-antara Tiah binti Daud dengan Ripin bin Mohamed itu, Tuan Kathi di-benarkan memberi surat keterangan cherai bagi orang yang tersebut itu dengan tambahan memberi kebenaran kapada Tiah binti Daud boleh jalankan hukoman bichara ini mengikut undang-undang negri.

(Signed) E. N. TAYLOR,

[L. S.]

*Magistrate, Rembau.*

[*Note.*—No judgment was delivered on this reference. The decision was based on the view that the decree-holder could not justly be required to wait for her certificate while the decree was satisfied by instalments. It will be noticed that this case goes rather further than *Sawiah v. Jadi*, (p. 106) where the decree-holder voluntarily abandoned her claim. In this case the plaintiff obtained her certificate and continued to enforce the decree. E.N.T.]

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\*[With reference to Civil Suit No. 106/27 between Tiah binti Daud and Ripin bin Mohamed you are hereby authorised to register the divorce of the parties, subject to the right of the plaintiff to continue to enforce the decree according to the law of the State.]

**SIAH v. SITAM.***Civil Suit 78/28.*

A wife seeking divorce must sue for division of the property before her petition is entertained by the *Kathi*.

2. Confinement expenses are an ordinary debt of the marriage; on divorce the wife can recover half the amount from the husband and this issue is triable in the Civil Court, not in the Court of the *Kathi*.

This was a suit by a wife against her husband. The defendant went away without divorcing the plaintiff; she gave birth to a child which died a few days later. The husband did not pay any portion of the expenses of the confinement or of the burial of the child. The wife sued for the whole amount of these expenses, and also made the usual claim for the value of her *dapatan* jewellery which the defendant had pawned; she had consented to this at the time. When she petitioned the *Kathi* for *tebus talak* he told her to bring her civil suit first.

The Court took the point whether there was jurisdiction to decide the claim for confinement expenses. The *Kathi* said that he would not entertain such a claim as in his opinion it was not covered by the expression *na/kah* (i.e., "subsistence") in the jurisdiction clause of his *kuasa*.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"I think the *Kathi* is right and that this Court has jurisdiction to hear suits to recover confinement expenses—I consider that a debt incurred in connection with confinement is an ordinary debt of the marriage, and on divorce each party is liable for half of it. The child's funeral expenses are clearly a liability of the same type.

I am of opinion that the plaintiff is entitled to bring this suit though the marriage is still technically subsisting, because she could not in any event obtain her divorce until this suit was settled.

I find for the plaintiff but I consider that she is only entitled to recover one half of the joint debts."

Judgment for the plaintiff for \$71 and costs.

The plaintiff then proceeded with her petition for *tebus talak*; after negotiations between the families and their tribal elders the following compromise was arranged:—

- (a) defendant to pay \$36 immediate cash to the plaintiff;
  - (b) defendant to divorce the plaintiff;
- in consideration whereof:—
- (c) plaintiff to withdraw her petition for *tebus talak* and all claims for maintenance;
  - (d) plaintiff to certify satisfaction of the decree.

The *Kathi* referred this settlement to the Court; it was contended that since *tebus talak* involves a payment by the wife to the husband there was valuable consideration for the proposed waiver of the balance due under the decree.

The only difficulty was that at the last moment the defendant was willing to pronounce *satu talak* only, whereas the plaintiff claimed that the agreement was for *tiga talak*.

E. N. TAYLOR, Esq., *Magistrate, Rembau*, delivered oral judgment:—

“I agree that in the proposed agreement there is good consideration for the satisfaction of the decree but the proposal to give only *satu talak* vitiates the whole settlement, for the plaintiff could not prevent the defendant from returning to her to-morrow, and that would reopen every question in issue; the settlement can only be approved subject to divorce by *tiga talak*.”

The defendant then pronounced the triple divorce in the presence of the Court and of the *Kathi*, and paid the \$36 to the plaintiff. The Court thereupon recorded satisfaction of the decree, and granted leave for immediate issue of the certificate of divorce.

**MAHAWA v. MANAN.***2nd June, 1928.*

*Mas kawin* is a perquisite of the woman payable to her separately, not a joint debt.

The rule that all questions of property must be settled before registration of divorce applies to questions at issue between husband and wife, not necessarily to claims by or against third parties.

This was a reference by the *Kathi* under the Courts Enactment.

The petitioner was a Rembau woman, and the respondent a Jambi; on their marriage the respondent was unable to pay the *mas kawin* (\$20) in cash and one Kechik, who stood *in loco parentis* to him and from whose house he was married, handed to the petitioner a silver ornament in token that she, Kechik, guaranteed the payment. The marriage was *nikah ta'alik*. The *charian laki-bini* amounted to \$80 in cash of which \$40 was lent to Mahawa's mother and \$40 to one Munap, a stranger. Manan disappeared and after thirteen months Mahawa applied to the *Kathi* to register the automatic divorce; she produced the token which was valued at \$2 or \$3 only and claimed to recover the \$20 from Kechik; Kechik contended that the \$20 was recoverable out of the *charian laki-bini*.

The *Kathi* referred the questions:—

- (a) How was the *mas kawin* to be settled?
- (b) How was the *charian laki-bini* to be apportioned?
- (c) Could the divorce be registered seeing that the *charian laki-bini* had not been recovered?

Mahawa and Kechik appeared in person and argued their cases.

E. N. TAYLOR, Esq., A.D.O. Rembau, delivered oral judgment:—

1. "The payment of *mas kawin* is a condition precedent to the marriage and the amount is the perquisite of the wife and her family; it is not a debt of the married pair and cannot be confused with, or set off against, the *charian laki-bini*. As between Mahawa and Kechik, Kechik is a guarantor and independently of any divorce Mahawa can sue Kechik under the guarantee, in the *Penghulu's* Court, using the token as evidence to support her claim. Kechik has a right over against Manan which she can pursue if he returns.
2. There is no apportionment on *talak gugor*—the whole of the *charian laki-bini* remains to the woman.

3. The rule that the certificate of divorce cannot issue till all questions of property have been determined operates where the disputes are between husband and wife and does not necessarily apply to claims against third parties. In this case the *charian laki-bini* consists of two separate choses in action, and if the husband were here it could be recovered by him and the wife suing as joint plaintiffs. The woman can have no right to recover it as her separate property until she has obtained her divorce."

Leave granted for immediate registration of the divorce and petitioner referred to the Court of the *Penghulu* of Gadong as to her three separate causes of action.

The *Kathi* thereupon registered the divorce.

Mahawa then voluntarily abandoned her claim against Kechik and returned the token.

Mahawa's mother undertook to pay the \$40 due from her.

**Re DAHIL dec.***Land Case 71/18.*

The debts of a married pair, and the burial expenses of both, are charges on the *charian laki-bini*.

Tiah (f)

DAHIL (m) = Nomah (f)

Sinap (f)

The *charian laki-bini* of Nomah and Dahil consisted of a half-share in a rubber lot, the other half belonging to Nomah's sister. Nomah and one child of the marriage died and Dahil paid the funeral expenses amounting to \$193. Afterwards Dahil died and his father, Sihat, paid the funeral expenses amounting to \$83.

Tiah claimed the land on behalf of her infant grand daughter, Sinap.

Sihat contested the application, alleging that Dahil had borrowed the \$193 from a Chinese and that he, Sihat, had discharged this debt.

W. R. BOYD, Esq., *Collector, Rembau*:—"It appears clear to me that the \$193 was paid out of the profits of the land in dispute, and not out of the separate earnings of Sihat.

*Ordered* that Tiah, as guardian of Sinap, be registered as holder of the land. Before registration Tiah is to pay to Sihat \$83, being the funeral expenses of Dahil."

Sihat appealed.

For the appellant *Harte-Lovelace* contended that the effect of the Collector's order was to pass the land free from the alleged debt of \$193 and consequently, if the debt could be proved, there was no one from whom Sihat could recover as Tiah was not the legal representative of the deceased Dahil.

The Hon. Mr. A. H. LEMON, *British Resident*, amended the Collector's order as follows:—"Tiah to be registered as guardian of Sinap, subject to the debts of the deceased Dahil being a charge upon the land."

**Commentary.**

Subsequent legislation has provided a means by which the Collector can, in a proper case, order a portion of the land to be auctioned in enforcement of such an unregistered, but customary, charge.

The case is a clear authority for the proposition stated in the headnote and illustrates circumstances in which such an order might be made. E.N.T.

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**RAHIM v. SINTAH and SITI.***Land Case 77/20.*

Claims to partition of *charian laki-bini* must be made at the time of divorce.

Sitam acquired the land in question while he was unmarried; afterwards he married Sintah and they had one daughter Siti; they were divorced, *cherai hidup*, and afterwards Sitam died.

Sintah claimed for herself, or alternatively for the infant daughter Siti, a share of the increase in the value of the land during her marriage to the deceased.

[There was a discussion as to whether children could succeed to their father's *charian bujang*; this is not reported because it was irrelevant to the claim, and the Collector recorded that he did not believe the witnesses; he was clearly of opinion that Siti could not succeed on that ground]. On the real issue—

G. A. de C. de MOUBRAY, Esq., *Collector, Rembau*:—"It is of the utmost importance that division of the *charian* should be made before completion of divorce—the woman can obtain redress at the time of divorce—none afterwards."

He transmitted the land to the *waris* of the deceased according to the ordinary rule *pembawa kembalek*.

**SI-ALANG v. SAMAT.**

*Land Case 6/26.*

Division in respect of divorce can be enforced afterwards, provided that it was claimed at the time of the divorce.

The parties took up the land in question during their marriage and jointly planted it with rubber; it was registered in the name of Samat, the husband. They had two sons who were still minors at the date of the trial.

Three years after the land was taken up the husband was sick and the parties quarrelled and were divorced, the husband promising to transfer half the land to the sons when the rubber came into bearing. Afterwards he failed to make the transfer and the petitioner brought this action claiming transmission of half the land.

The *lebaga* said:—"The land is *charian laki-bini* and the wife should get her half. If either party is sick and the other obtains a divorce then in any case they take half the *charian* each."

E. N. TAYLOR, Esq., *Collector, Rembau*:—"It is perfectly clear that the land is *charian laki-bini* and that the petitioner is entitled to a half share in the land."

*Order accordingly.*

**UJANG v. BUJOK.***Land Case 23/27.*

Divorce is a condition precedent to a claim by the man for division of *charian laki-bini*.

The parties had been married for a great many years and had a son and two daughters, to each of whom they had given one lot acquired during the marriage; they had one lot of rubber land of their own, registered in the wife's name. Differences having arisen the husband desired to divorce his wife and brought this action claiming a half of the remaining *charian laki-bini* lot.

E. N. TAYLOR, Esq., *Collector, Rembau*.—"In my opinion the petitioner will be entitled to the order prayed for, if and when a divorce is decreed by a competent religious Court.  $\frac{1}{2}$  E. 665 to be transmitted from Bujok to Ujang on production of a certificate of divorce between them."

A fortnight later the petitioner filed a certificate of divorce but it was *satu talak only*, and the man, therefore, had a right to return to his wife at any time within the period of purification, or *edah*, prescribed by Muhammadan law.

Upon conference with G. M. KIDD, Esq., *D. O. Tampin* and Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*, it was unanimously agreed that the order must remain conditional only pending completion of *edah* and could only be made absolute on proof that *edah* was accomplished and that the petitioner had not returned; only then would the divorce (which was a condition precedent to partition) become absolute.

Later, on proof that *edah* was accomplished, and that the husband had not resumed cohabitation, the order was made absolute and registered.

**Commentary.**

The wife can claim partition, independently of divorce, *Minah v. Mat Dahan* (p. 99) but the difference is not a case of the *adat* being more favourable to women—it is due to the incidence of the Muhammadan law of divorce, which is more favourable to men. The man can divorce his wife at will, and can return at will within the *edah* (100 days) and as this frequently happens it would be against public policy to admit claims to partition on a mere provisional divorce.

## PEAH v. PEKIH.

*Land Case 28/26.*

On dissolution of a marriage with a saving clause (*nikah ta'ulik*) the wife is entitled to the whole of the *charian laki-bini*.

This was a claim by a deserted wife who, being affirmed, said:--

"I was married to Pekih about eleven years and we had three children of whom two survive. About five years ago he deserted me—he did not divorce me—he said he wanted to visit his relatives—he said nothing about whether he would return—he simply went and I heard no more—no message—no letter. It was a marriage with a condition that if he left me for a year without tidings divorce should ripen of itself—about four years after he left me I claimed *pasah* from the *Kathi* and obtained an order—I now claim the land in his name—it is the sole *charian* of that marriage—I am married again now."

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the land to Peah, as prayed.

**ABDULLAH v. AWA.***Land Case 34/18.*

On divorce, *cherai hidup*, the *charian laki-bini* is divided equally, irrespective of the number of children.

The parties were married in 1914. A few months later they acquired two acres of land which they planted with rubber; the title, E. 991 Chembong, was registered in Awa's name. In 1917 they acquired another lot and planted it with rubber; this was only one acre; the title, E. 940, was in Abdullah's name.

In March, 1918, Abdullah divorced Awa but the *Kathi* refused to issue a certificate because the joint earnings had not been divided. The moveable earnings were amicably divided by the tribal authorities but they failed to settle the division of the land and Abdullah then brought this action claiming a half share in E. 991; he offered to transfer a half share in E. 940 to Awa.

Awa resisted the claim on the ground that she had to support the two sons of the marriage.

Raja UDA, *Collector, Rembau*:—"The *adat* rule is that on divorce—*pencharian bahagi*. It is admitted that E. 991 was acquired during marriage and it has not been divided. I therefore order that Abdullah be registered as owner of a half share in E. 991. Awa is of course entitled to claim a half-share of any landed property in the name of Abdullah, which was acquired during the marriage."

[*Note*.—Apparently the Collector considered that he could not order the other lot to be divided forthwith—probably because no notice as to E. 940 had been issued as required by the Enactment.]

Awa appealed.

Evidence of custom was given, and was to the effect that the *charian* should be divided equally by value.

The Hon. Mr. A. H. LEMON, *British Resident*:—"Appeal dismissed—both pieces to be divided."

**PESAH v. DOLLAH.***Land Case 140/27.*

On *cherai hidup* the joint property is divided equally between husband and wife, irrespective of the number of children to be supported, but the husband has power to give an extra share to the children if he so desires, and this is called *tentukan*.

Dollah divorced his wife Pesah at her request; they had three minor sons and one lot of jointly acquired land which was in Dollah's name. Pesah claimed three quarters of this on the ground that as she had to maintain the three sons equal division was, in the circumstances, unfair.

Three "experts," consulted separately, were all of opinion that the rule *chari bahagi* means strictly equal division, that the *adat* contemplates adjustment (*timbangan*) on *cherai mati* only, but that on *cherai hidup*, the husband may nevertheless *tentukan* an extra share to his children if he wishes to do so.

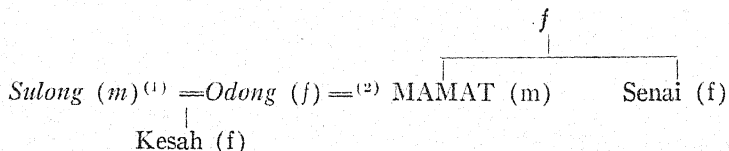
Dollah agreed to give the whole of the land to Pesah provided that it was kept for the sons and that her future husbands were prevented from wasting it.

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted half the land to Pesah herself and half to Pesah as trustee under caveat for the three sons.

## SENAI v. KESAH.

*Land Case 121/26.*

If there is no issue of the marriage *charian laki-bini* remains to the wife on the death of the husband, and on her death it passes to her heirs.



Odong was married to Sulong and they had one daughter Kesah. Sulong died and Odong married Mamat; this marriage was childless the couple acquired two lots of land, one in each of their names; Mamat died and shortly afterwards Odong died.

Senai, the sister of Mamat, now claimed the lot in Mamat's name and Kesah the step-daughter, contested the claim.

Senai sought to show that the land was originally bought out of the proceeds of cattle which were bought with her money and argued that the land was therefore *harta pembawa* of the marriages of Mamat.

The Collector found as a fact that the land was *charian laki-bini* of Mamat and Odong, but there still remained the question whether, the marriage of acquisition being childless, the land devolved on Senai or on Kesah.

The *lembaga* of Senai said:—"The first principle as to *charian laki-bini* is *mati laki tinggal ka-bini* so where, as here, the husband dies first, the wife succeeds to the whole of the *charian* and is liable for certain debts; I understand that the wife died leaving a daughter, Kesah, who is not the daughter of the husband in question—I cannot say what is the applicable rule.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The rule as to *charian laki-bini* is as stated by the *lembaga* but it is subject to several qualifications. In this case the husband died first, and there were no children of the marriage; consequently the simple rule applies and the wife surviving takes all. On the death of the wife the property must pass to the nearest female relative, namely the daughter. It is of no consequence whatever that this daughter is the daughter of a different marriage. The tribe not the family is the unit to consider.

It must be noted, however, that I do not decide that if there were a daughter of the marriage in question, such daughter and Kesah would share equally; that question must remain an open one."

**Commentary.**

The whole question is—"Which died first?" Senai and Kesah were in exactly the same respective positions as Ichik and Mahani in *Re Kulop Kidal dec.* (p. 89). If the marriage is childless the *harta charian laki-bini* goes to the *waris* of the survivor; the name in which land is registered does not affect the question of *adat* though it may affect the question of fact, whether the land is *charian laki-bini* or not. The difficulty rarely arises unless the husband and wife die within a short period.

As to the point raised in the last sentence of the judgment it is clear from *Re Pral dec.* (p. 128) that a daughter of the marriage of acquisition would exclude the step-daughter; compare also *Re Sinding dec.*, (at page 75) in which there would have been no ground for contest if a daughter could claim to share the *charian* of the subsequent marriage with the daughters of that marriage.



**Re LAMIT dec.***Land Case 11/26.*

An adopted daughter has all the rights of a natural daughter.

On the death of the husband all the *charian laki-bini* passes to the widow as trustee for the issue, and thereupon becomes subject to customary limitations.

Lamit left a widow, an adult adopted daughter, and a brother. The widow claimed all the land; the daughter claimed half, admitting the claim of the widow, her adoptive mother, to the other half; the brother alleged that he should have a share.

The *lembaga* of the women deposed as follows:—

“The land is all *charian laki-bini*—hence the widow is entitled to the whole, and on her death the daughter will succeed to the whole. The land, being *charian*, becomes subject to the custom, (*i.e.*, subject to restrictions on dealing) on transmission. The brother is barred.”

E. N. TAYLOR, Esq., *Collector, Rembau*:—*transmitted* the whole of the land to the widow, entered a caveat to protect the interest of the adopted daughter, and inscribed the title “Customary Land.”

**MERIAM v. TIMAH.**

*Customary Enquiry 18/27.*

*Charian laki-bini* property becomes entailed on transmission to the widow, and she cannot dispose of it except in accordance with the customary rules of distribution.

Meriam was married to Salleh and they had two daughters, Ensah and Timah; their *charian laki-bini* consisted of one lot of land and a small amount of cash. Salleh died; the cash was insufficient for his funeral expenses and Ensah provided a buffalo for the customary feasts. The land was transmitted to the widow.

Afterwards the widow proposed to transfer the whole of the land to Ensah in settlement of the funeral expenses.

The *lembaga* assented.

Timah objected.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"This is a dispute about funeral expenses, not about the land. The land was *charian laki-bini* of deceased and Meriam, and the burial expenses are chargeable on it if there was no moveable *charian*. More than half the funeral expenses were available in cash and it is clearly ridiculous for one daughter to have the whole of the land, which she herself values at \$500, and so defeat the other daughter's expectation of half.

I therefore hold that the assent of the *lembaga* is given contrary to the custom and I refuse leave to execute the transfer."

**Re SI-ABU dec.***Land Case 172/27.*

On the death of the husband *charian laki-bini* vests in the widow for the benefit of the issue, irrespective of sex.

Si-Abu left one lot of *charian laki-bini* land, a widow and two sons, both young infants.

The *sembaga* of the woman deposed:—

“The true *adat* is that when the husband dies the wife gets the property, whether she has any children or not; the children succeed only when their mother dies—it is quite in accord with *adat* for the widow to give it to the children forthwith if they are old enough to look after it.

In my opinion if the children are small a caveat should be entered because otherwise there is risk of the children's clear rights being defeated. If their mother remarries, as she commonly does, she is apt to fall under the influence of her second husband, and he may persuade her to sell the land.”

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the land to the widow as trustee for the two sons, and entered a caveat.

**TEMAH v. HAJI ZAKARIA.***Rembau Administration Suit 35/13.**Seremban Administration Suit 44/13.*

*Charian laki-bini*, if *sawah* or *kampong*, devolves on the female issue only—the widower is not entitled to any share.

Kepam and her husband Haji Zakaria bought land containing a *tebat* (fish pond); they converted it into a *sawah*; the title was registered in both names and contained a memorial shewing that they had transferred a portion to one Si-Ampam. Many years later Kepam died.

Temah, the only surviving daughter of the marriage, claimed the land and her father, Haji Zakaria, contested the claim. The matter was referred to the Deputy Registrar, Rembau, for enquiry.

It was agreed that the land was *charian laki-bini*. The evidence was that if there are no children, *mati-bini tinggal ka-laki*, but if there is female issue the *charian laki-bini* should be divided among the daughters.

J. BEECH, Esq., *Deputy Registrar, Rembau*:—"According to the local custom Temah binti Haji Zakaria is entitled to all the land held under O. T. 595 Selemak which has not been transferred to Si-Ampam binti Lanjong."

The Registrar at Seremban recorded the decision of the Supreme Court as follows:—

"Temah to get letters of administration over Kepam's estate. Transfer of that part of O. T. 595 Selemak which has not been transferred to Si-Ampam to be transferred to Temah as administratrix. She may apply to Court for transfer to herself later when she has settled up the estate."

[Temah however never took out the formal grant, so the order was not made effective.]

**Commentary.**

The point of this case is that the decision involved taking the man's name off the register immediately after the death of the wife and transmitting the whole of the *sawah* to the daughter forthwith. The *adat* requires this rather drastic step when the widower remarries, as otherwise the rights of the issue are seriously prejudiced; compare *Saleha and Habibah v. Amun* (p. 164) and *Re Si-Alus dec.* (p. 138) where similar orders were affirmed on appeal.

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**Re RAHMAT PAKEH dec.**

*Land Case 176/27.*

*Charian laki-bini* land, if *kampong* or *sawah*, is inherited by the daughters of the marriage only, (not by sons and daughters equally).

Rahmat Pakeh left a *kampong* lot which was *charian laki-bini*, a widow, and a son and a daughter both adult. There was another *charian kampong* in the wife's name and she applied for the one in the name of deceased to be transmitted to the daughter.

The *lembaga* deposed:—

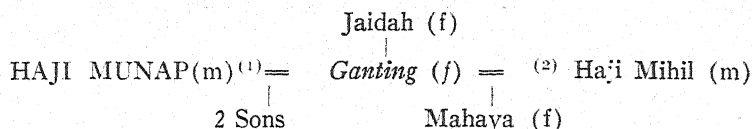
“The correct *adat* is that if there are daughters, the daughters alone inherit *charian kampong* and *sawah*—rubber lands are inherited by sons and daughters equally. I think that sons ought to be allowed to inherit *sawah* and *kampong* too, but the true *adat* does not allow them to do so.”

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the *kampong* in question to the daughter alone.

## Re HAJI MUNAP dec.

*Land Case 141/27.*

A *dusun*, though *charian laki-bini* originally, is not inheritable by the sons of the marriage.



The *dusun* in question was *charian laki-bini* of Haji Munap and Ganting, who had two sons but no daughter. Haji Munap died many years before the petition; Ganting remarried and had a daughter Mahaya. Ganting died, and some years later a stranger claimed transmission on the basis of an alleged contract made long after the death of Haji Munap by one of the two sons. This action was dismissed, and the Collector ordered further enquiry. Finally Jaidah, the mother of Ganting, claimed on behalf of the infant Mahaya.

The evidence of custom was that though *charian laki-bini* rubber land is inheritable by sons, *kampong*, *sawah* and *dusun* are for women only. In this case the husband died first and therefore the *dusun* remained to Ganting herself—it should now go to her *waris*, i.e., the daughter by a subsequent marriage, in preference to the sons of the marriage of acquisition. No claim was made by or on behalf of the sons.

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the land to Jaidah in trust for Mahaya.

(Note:—Contrast the next case.)

**Re PRAL dec.***Land Case 203/24.*

When the husband dies the *charian laki-bini* remains to the widow, and on her death rubber land devolves on sons of the marriage of acquisition, in preference to daughters of the wife by different husbands.

(1) m =	Diah (f) =	(2) PRAL (m)
Tiawa (f)	Daud (m)	

Diah had a daughter Tiawa by her first husband; afterwards she married Pral and they had a son Daud; Diah and Pral acquired one lot of rubber land registered in Pral's name.

Pral died but Diah made no application. Three years later Diah died; afterwards Daud applied for transmission of the land in Pral's name.

Tiawa did not contest the claim, but the *lembaga* said she had no claim as against Daud "because she was by a different father."

E. E. PENGILLEY, Esq., *Collector, Rembau*:—transmitted the land to Daud.

**Commentary.**

The Collector seems to have doubted Daud's right to exclude Tiawa. The point is that though Tiawa was issue of Diah, she was not issue of the marriage in question. If there had been no issue of the marriage of acquisition, Tiawa would have succeeded, as in *Senai v. Kesah* (p. 120).

In this case the reversion from Daud would be to Tiawa, as in *Re Amat bin Yim dec.*, (p. 144).

## Re KAHAR dec.

*Land Case 87/27.*

If on the death of the wife leaving issue the *charian laki-bini* is not apportioned but retained by the widower, it is *harta terbawa* (not *pembawa*) and a share in it is held in trust for the issue of the marriage.

2. The *waris* of the widower are not entitled to succeed to any share in such property unless they have in fact paid his funeral expenses.

3. *Charian laki-bini* rubber land is inheritable by sons and daughters equally, and becomes *pesaka* on transmission to them; the sons however receive not a life-interest only but a full interest of which they can dispose, subject to customary limitations; the sons' shares ultimately revert to their *waris*.

The facts sufficiently appear from the judgment of the trial Collector.

E. N. TAYLOR, Esq., *Collector, Rembau*:—Kahar the deceased now in question was married many years ago to Sitam and they had one daughter, Supau the petitioner, and four sons of whom the two younger are infants in Supau's care. They acquired three lots of rubber land registered in Kahar's name and marked "Customary Land." Sitam died six years ago; Kahar was properly *jeput*, was remarried and divorced, and finally died unmarried in Supau's house, and Supau provided the proper customary funeral feasts.

2. Supau now applies for transmission of all three lots, which she says are *harta terbawa*, that is *charian laki-bini* registered in the name of the husband, who therefore retains as it were a life interest after the death of his wife, with reversion to the children of the marriage. On the other side Haji Tiram, sister of the deceased, also claims the whole of the property on the ground that it is *pembawa* of the subsequent marriages, and as such returns (*kembalek*) to her, the *waris*.

3. Four *lembagas* gave evidence, and their testimony exhibits characteristic conflict; it is plain, however, that the preponderance of opinion is in favour of the children. The Dato Ngiang is not far from the truth, but either a bias (perhaps unconscious) in favour of his own *anak buah*, the petitioner, has carried him a little too far or else he has confused the general rule with the variation for which the particular case calls. The *waris* claim the whole of the property in dispute, though their own *lembaga* says they are only entitled to half; I respect the opinion of this witness, the Dato Maharaja Inda (commonly called "Majinda") because he gave his evidence well, and I know that he has said exactly the same thing before when no actual case was before him. Nevertheless it is certain that he is not wholly correct, for if the *adat* really provided the simple



rule *bahagi dua* in every case, everybody would know it and there would not be the dispute.

4. It is therefore necessary to look further than the evidence in this actual case, for the material on which to base a sound decision; I have therefore considered all the cases, and all the general information which I have been able to gather in the course of nearly two years of close study of the *adat*, and have formulated what I believe to be a true and accurate statement of the principles governing the devolution of *charian laki-bini* in *Rembau*; this statement is set out in the statutory report." [and since revised pp. 27, 28].

5. "The rule applicable to this case is the rule of *kepan*. Kahar and his wife Timah left a daughter and four sons; their *charian laki-bini* consisted of the three lots of land now in dispute, and one buffalo not in dispute. Timah died first, and had the property been registered in her name it would have been necessary for a division to be made by the parties and their *lembagas*, or, failing settlement, by the Collector; as the property was in Kahar's name he remained the registered owner till his death, unless he chose voluntarily to transfer part to the children. But because he did not do that the land does not pass intact to his *waris* as *harta pembawa* for it is only the man's share of the earnings which becomes *pembawa*—these three lots were no one's share; they were the whole. It is agreed by all the *lembagas* and it is certainly true that the children are at least entitled to a portion; no settlement having been reached a division or award must now be made by the Collector.

6. Supau is by the custom responsible for the maintenance during bachelor-hood, for part of the expenses of marriage, for the life and blood throughout their lives, and for the nursing and burial whenever they are unmarried, of her four brothers; I am therefore of opinion that the property was not so extensive in relation to the liabilities on it as to justify the retention by Kahar, had a division been made on *jeput*, of so much as one half. Moreover the evidence shows that Supau in fact maintained her father during several periods after *jeput*; Had Kahar's *waris* in fact maintained him and provided funeral expenses I would have awarded them a half share in one lot, but they did not do so.

Haji Tiram says she contributed \$200 cash to the funeral expenses, but since the feasts were admittedly at Supau's house, definite evidence is necessary to prove that statement; Haji Tiram failed to satisfy her own *lembaga* that the statement was true, and the matter was accordingly the subject of a further enquiry before me. The evidence is recorded. I am not satisfied that Haji Tiram paid anything; I can therefore see no reason why any of the property should go to her, and I accordingly give judgment for Supau without qualification and

Order that E. M. R. 457,815 and 816 Bongek be transmitted to Supau binti Kahar."

Haji Tiram appealed.

The Hon. Mr. B. W. ELLES, *British Resident*, and the Hon. Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—"In this case we agree with the decision of the Collector that Haji Tiram has no claim to be registered but we do not agree with all the Collector's reasons for so deciding. When, as in this case, there is land that is *charian laki-bini* and there are children of the marriage both female and male and the wife dies first:

- (a) The share of the wife which may be a half share (but may also be more or less than a half according to circumstances) goes to the husband for his life time but only as trustee for the children.
- (b) The share of the surviving husband becomes his own share (provided he is properly *jeput* to his *waris* after 100 days). The reason for that share being given to him is for his own maintenance and as his *keban* and provided his *waris* maintain him and pay for his funeral expenses they have (in the person of his nearest female relative) a definite claim to that share on his death.

In this case however we think that the Collector was correct in finding that they did not maintain him or pay for his funeral expenses and they have therefore forfeited their claim to his share.

As regards the division of the property between the children we do not agree with the Collector that the whole should be registered in the name of the daughters as of right but only by consent. No consent can we think, be given by the sons until they are of age to give it themselves.

We think the land is not *pesaka* as regards inheritance by the children but becomes *pesaka* as soon as it passes into the ownership of the children of the original owner. The shares of the sons are their absolute shares (not life interest only) but on death of any son his share will pass as *harta pembawa* to the customary heir, that is to the nearest female relative in the tribe.

We order that these lands should be registered in equal shares in the names of the daughter and the four sons, but if the two sons who are of age wish to do so they can have their shares registered in their sister's name. The sister should be registered as trustee for her two infant brothers."

Afterwards before the Collector—Supau binti Kathar stated "I would prefer to have all five names entered." Samat and Tahir bin Kahar, agreed, and the Collector made an Order accordingly,

1/5 to Supau.

2/5 to Supau as trustee,

1/5 each to Samat and Tahir.

**SALIN v. LEMBAGA BATU BELANG.**

*Customary Enquiry 4/27.*

Acquired land does not become subject to tribal options on transfer to the son of the acquirer, if transferred for valuable consideration, even though the title be marked "Customary Land."

The assent of both husband and wife is necessary for the disposal of *charian laki-bini* property.

The land in question was alienated to Norimah and the title was inscribed "Customary Land" *ab initio*; Norimah transferred it to her son Salin for \$20 as he said—the transfer was drawn as for \$100; Salin wanted to transfer the land to his grand-daughter Amah but the *lembaga* refused his assent on the ground that the land was *pembawa* and should return to Salin's *waris*; the *lembaga* himself offered to buy the land for \$400.

Salin's wife contended that the land was *charian laki-bini* of herself and Salin; she wished it to be transferred to Amah.

An independent *lembaga* said the land was *charian laki-bini* and should devolve accordingly whether marked "Customary" or not since it was so'd by Salin's mother, not transferred by way of gift.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—"I am of opinion that the land is *harta charian* and Salin is at liberty to transfer it to h's daughter, provided that his wife agrees—transfer to Amah approved."

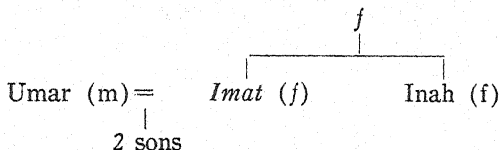
**Commentary.**

This land had never been inherited by anyone—the argument would not necessarily apply to ancestral land which had been sold subject to options—see further p. 37. E.N.T.

# Re MUNAP and SALLEH (infants.)

Land Case 122/27.

A man has no power to dispose of *harta terbawa* and the *waris* of the children may recover the children's share, even from a transferee.



Imat and Umar acquired three lots of new land, one in Imat's name and two in Umar's; their two sons were both infants. Imat died and Inah succeeded to her ancestral land; the acquired lot in Imat's name was transmitted to Umar, Imat making no objection because Umar was then caring for the two sons. As soon as he had obtained the transmission, however, Umar sent the sons to Imat, and she maintained them. Umar went to live in Pahang and married a Pahang woman. Three years later Umar transferred all the three acquired lots to his mother, who was a Rembau woman.

Inah thereupon brought this action claiming that, notwithstanding the transfer, a half-share in each of the three lots ought to be transmitted to her as trustee for her two nephews.

[She also alleged that Umar had sold the *charian laki-bini* house of himself and Imat, and appropriated the entire proceeds; this house, however, was shewn to have been built on the *charian* land, thus distinguishing the case from *Ungkar v. Sichik*, (p. 220) and also from *Nyai Ampar v. Impam and Langkar*, (p. 67) but this issue could not be decided in the land case, and a separate suit (which would have lain) was not brought.]

Umar alleged that he had issued due notice of his intention to transfer the land, before executing the transfer to his mother, but this was proved by the documents to be untrue; the titles had not then been inscribed "Customary Land."

E. N. TAYLOR, Esq., *Collector, Rembau*:—"In my opinion half of all the three *charian* lots must vest in the trustee of the infants. It is clear from *Re Kahar dec.*, (p. 129) that where all the *charian* is in the surviving husband's name he holds the children's share as a trustee for them.

If the transferee were a stranger or a person not subject to the *adat*, I think her registered title would be absolute, but here she is a very close relative—in fact the grand-mother of the infants in fraud of whom the transfer to her was made, and she is a member of one of the scheduled tribes.

I hold that she is a trustee, within the equitable meaning of that word, for the infants and I order that one half undivided share in the three holdings in question be transmitted to Inah binti Jaya as trustee, with a caveat to protect the interests of Munap and Salleh bin Umar; Inah takes no beneficial interest under this order.

The question of the house cannot be dealt with, of course, in this proceeding.

The order is without prejudice to any claim by Tinah against Umar for reimbursement."

There was no appeal and no further proceedings were brought by any of the parties.

**TAIB v. UCHANG.***Land Case 334/23.*

On the death of the wife if there is little *chavian laki-bini* property the whole is inherited by the female issue.

The proper guardian is not the father but the *waris* of the infant.

Lamah and her husband Uchang acquired one lot of land registered in Lamah's name; they had one daughter, an infant. Lamah died and her mother paid the funeral expenses and maintained the child. Taib, Lamah's brother, maintained the land. Taib and Uchang competed for transmission.

E. E. PENGILLEY, Esq., *Collector, Rembau*:—"It is the Rembau *adat* for the child to go with its mother's relations, not with its father."

He accordingly transmitted the land to the infant with Taib as guardian.

**Re KERING dec.***Land Case 60/27.*

If the wife dies leaving issue of the marriage and there is little *charian laki-bini* property the widower may not be entitled to any share.

Kering and her husband Salam acquired one *kampung* lot by purchase from another tribe, and a half-share in a rubber lot. They had two small daughters. Kering died and her sister Siti paid the funeral expenses and took charge of the children. There was no other property; Salam had no land in his own name and Kering had no *pesaka*. The *lembaga* said:—"It is clear *adat* that the burial expenses of either party are a first charge on the *charian laki-bini* property."

E. N. TAYLOR, Esq., *Collector, Rembau*:—"I agree with the *lembaga*; similar evidence has been given in other cases. The rule as to division of *charian* property on the death of the wife leaving children is in dispute." [This was before *Re Kahar dec.*, p. 129, and *Saleha and Habibah v. Amun*, p. 164 had been decided.] "But I am satisfied that in Rembau the children, especially daughters, have the first right and the husband can claim nothing for himself unless there is more than enough property to provide adequately for the daughters. In this case there is clearly no more than sufficient for the daughters who have no ancestral property coming to them through their mother. I, therefore, transmit the rubber land (half share) to the creditor, Siti herself, and the *kampung* to Siti as trustee—she is the proper tribal trustee for the infants."

**Re EMBAM dec.***Land Case 139/27.*

The proper guardian of infants is their *waris* not their father, and it is contrary to the custom and to public policy to transmit property to the widower even if his petition is unopposed.

This deceased left a widower and two infant sons; there was one lot of *charian laki-bini* land registered in her name and one lot, alleged to have been bought out of *wang pembawa* but jointly planted, in the husband's. At the date of the petition the widower was living in his deceased wife's house and was not remarried; he alleged that he was cherishing the children but admitted that the mother of the deceased lived very near and wanted to take charge of them.

The Collector adjourned the case and directed the *sembaga* and *waris* to attend.

The mother of deceased then claimed, and the *sembaga* was of opinion that as the widower already possessed one lot, the whole of that in the name of deceased should go to the *waris* in trust for the children.

E. N. TAYLOR, Esq., *Collector, Rembau*:—Ordered accordingly.

**Commentary.**

It is unusual for the *waris* not to claim on their own initiative in such cases but even if they do not appear it is most dangerous to assume that they waive. To transmit the property to the widower in such a case is contrary to the *adat* and prejudices the infants. Only too often it leads to serious trouble later—compare *Re Munap and Salleh, infants*, (p. 133) and *Habibah and Saleha v. Amun* (pp. 149, 164). E.N.T.



## Re SI-ALUS dec.

*Land Case 86/27.*

Apportionment of property must be made with regard to the family as at the hundredth day.

Si-Alus and her husband Anjong had one child, a daughter; their *charian laki-bini* consisted of E. M. R. 879 in both names and a half share in E. M. R. 999 in Anjong's; the other half of E. M. R. 999 belonged to a stranger.

Si-Alus died in 1923. Anjong paid most of the funeral expenses, \$27/— being supplied by Si-Alus' family. Anjong was *jeput* and married into another tribe; the child was cared for by the *waris* of Si-Alus. Later, Anjong resumed custody of the child and took her to the house of his new wife, and there the child died and Anjong paid the funeral expenses.

No application was made until 1927.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The case at the date of *jeput* was very similar to *Re Puan dec.* [pp. 149, 164]. The *charian laki-bini* property ought to have been divided, one share to the *waris* of deceased as trustees for the child, and one share to Anjong by way of *kepan*. The two shares are not necessarily equal (*Re Kahar dec.*, p. 131).

Having regard to all the circumstances I consider that E. M. R. 879, should have been child's share and the half of E. M. R. 999 only should have been retained by Anjong; both lands are under rubber. It appears that an arrangement to much the same effect was made by the parties but never completed. As the two families are not friendly I varied the arrangement for the same reasons as in *Saleha and Habibah v. Amun* [page 165] which was affirmed on appeal. The family of Si-Alus are satisfied with this order and have since informed me that they are prepared to drop the question of the \$27.

Anjong, however, appeals to the Resident and *Undang*, not on the ground that my division is unfair but on the ground that because the child has since died he ought to have the whole of the *charian* by the rule *mati bini tinggal ka-laki*. If the child had died before Si-Alus there would have been no issue and that rule would have applied but I cannot see that the subsequent death of the child affects the question.

The rights which accrued to the *waris* under the custom at the date of Si-Alus death are in no way extinguished—even if the land had been registered in Anjong's name they could have recovered.

The fact that Anjong paid the funeral expenses of the child gives him no rights because he was a volunteer (*Ungkar v. Sichik*) [p. 221 (f)].

I am unable to perceive that Anjong has any merits at all. Every point in this case has been decided in one or other of the recent cases cited, each of which was determined after the fullest possible consideration."

The Hon. Mr. E. C. H. WOLFF, *British Resident* and Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—"Anjong states his ground of appeal, *viz.*, that the child Inchah having died, his wife's share of the *charian* should go to him under the rule *mati bini pulang ka-laki*.

As the child died subsequently we do not consider that this rule can apply in the same way as if there had been no surviving children at the time of the woman's death.

We dismiss the appeal."

**Re INAP dec.***Land Case 80/27.*

Distribution on death of the wife leaving issue—*tentukan*.

Deceased was the wife of the *lembaga* Anak Malaka she left ancestral land, and also three lots of *charian-laki-bini*, two of which were *kampung* land and one, E. 729, under rubber; there were also three other lots of *charian laki-bini* land under rubber, registered in the name of the husband.

There were three daughters of the marriage and two sons, but as the law then stood the sons could not in any event be registered and their claim was dropped by consent.

The widower desired to waive his claim (if any) to a share in the *charian kampung*, and also to transfer his own three rubber lots, one to each daughter, and in return to claim the whole of E. 729 as his *kepan*. He had been properly *jeput* and was married into another tribe.

The transfers to the daughters having first been registered—

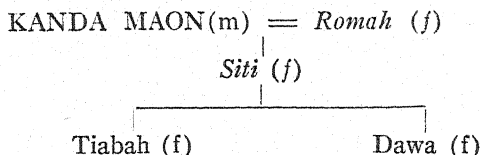
E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted E. 729 to the widower, and the rest of the property to the three daughters equally.

# Re KANDA MAON dec.

Land Case 26/27.

"Issue" includes grand-daughters.

The custom of *beli Haji* considered.



Siti died first, then Romah, and after many years, Kanda Maon. It was proved that after the death of Romah, Kanda Maon had been *jeput*, and subsequently remarried, and that he died in the second wife's house.

Tiabah and Dawa claimed to succeed to a half-share in each of two lots at Spri, which were registered in the name of Kanda Maon at the time of his death, as *charian laki-bini* of deceased and Romah. The other half belonged to a stranger.

Tayid and Khamis, both males, distant cousins of deceased in his tribe, contended that these interests and two buffaloes were the share of the *charian* of that marriage which deceased retained after the death of Romah and as such became *pembawa* of the subsequent marriage; they claimed that the land should be transmitted to one Nyai, their cousin, whom they declared to be the *waris* of the deceased but Nyai herself did not claim or appear though able to do so. It was admitted that Tayid had already obtained the buffaloes; it was not shewn that any other property had ever descended to Tiabah and Dawa as *charian laki-bini* of Kanda Maon and Romah.

Both sides claimed to have paid the funeral expenses.

[No doubt the bulk of them were in fact paid by the second wife in whose house he died, and who was properly liable; she did not appear.]

The *lembaga* of Kanda Maon's own tribe supported the proposal to transmit to Nyai but under cross-examination by Tiabah he offered to withdraw his opposition to Tiabah's claim if she would pay \$40 to Tayid and Khamis to *beli Haji* for the deceased.

The titles were derived from "Old Titles" but examination of the old documents and transfers threw no further light on the matter.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"It is clear that Kanda Maon was the purchaser of this lot (472) from which the titles herein were derived and also that he purchased other lands; 1929] *Royal Asiatic Society*.

it is not certain whether his wife was then alive but on the evidence I hold that she was and that all these lands were *charian laki-bini*. It is therefore a question whether (the wife having died first) the two lots in dispute should go to the grand-daughters or to the family of this deceased (Maon).

Parr and Mackray leave the point doubtful because they do not deal clearly with the question—"which died first—wife or husband?" The modern *lembagas* all say the property is divided but it is still undecided whether this is the old *adat*, a modern development or a mere modern fiction; Talib's case is still pending." [Note—this alludes to *Re Timah dec.*, p. ; *Re Kahar dec.*, and *Saleha and Habibah v. Amun* were still later.]

"I am, however, clearly of opinion that vicarious claims ought not to be allowed unless they are clear, and unless also a sufficient explanation of the real claimant's absence is given. Here it is plain that Tayid and Khamis, having no claim themselves, are using their cousin Nyai (possibly with her consent but certainly without her co-operation) as a dummy to hold the land for them.

The *lembaga's* proposal is absurd and there is no shadow of evidence of any custom for *beli Haji* which could operate here. It is palpably a device to squeeze \$40 out of two young women whose claim is good but not quite unimpeachable."

*Order.*—Transmit the land to Tiabah and Dawa equally.

### Commentary.

1. The facts in this case were of unusual difficulty; assuming that they were found correctly the decision seems, in the light of subsequent cases, to be correct.

2. As regards Nyai's "claim" it must be remembered that § 10 of the Customary Tenure Enactment 1926, following § 37 of the old Land Enactment, contains an important variation from ordinary civil procedure expressly empowering the Collector to make an order in favour of "any other person"—an expression wide enough to include a person who might claim but does not actually do so.

3. This is the only case in which the question of *beli Haji* has arisen and it is clearly distinguishable from the case contemplated by Parr and Mackray (at p. 74) for here Tiabah and Dawa were invited to *beli Haji* for a member of another tribe who had long before severed his connection with their tribe. Moreover it was never suggested that either Tayid or Khamis had any intention to go to Mecca.

E.N.T.

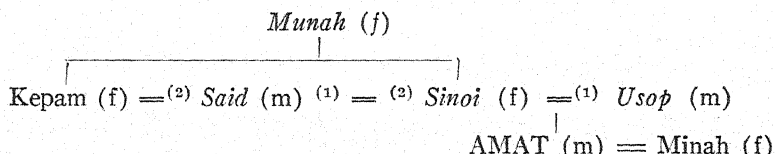
## MINAH v. KEPAM.

*Land Case 90/27.*

The devolution of acquired property depends on its origin and history.

Property *pulang* for valuable consideration becomes the *charian* of the transferee.

This was a case in which the facts were peculiarly intricate; the parties were related thus:—



Amat, the deceased in question, was the son of Sinoi and Usop. After Usop's death Sinoi married Said; then Sinoi died and Said married her sister Kepam, *ganti tikar*. Amat, being unmarried, naturally lived with Kepam, his aunt and *waris*; during this period Said and Amat jointly took up one lot of land and borrowed money to plant it with rubber. Amat then married Minah. Afterwards, Said died and Amat succeeded to Said's share, undertaking to pay off the debt; he did in fact pay it.

Amat and Minah had no other *charian* property. Amat died and Minah paid the funeral expenses.

Both Kepam and Minah now claimed the whole of the land—each alleging that it was *charian laki-bini* of herself and her husband.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The title was registered in the names of Amat and Said, clearly then, in the first place:—

half was *charian laki-bini* of Kepam and Said, and  
half was *charian bujang* of Amat.

The land was encumbered with a debt which was outstanding when Said died; the applicable rule then was *mati laki tinggal ka-bini*, but Kepam waived her claim (*vide* Record of L. C. 420/24) and did *pulang* the land to Amat in consideration of his discharging that liability. Amat did so, and thereby made the *pulang* absolute, see the judgment of Pennington in *Tukang Rahman v. Nyai Ampar*, (p. 258) and since he did so during the coverture of Minah it is clear that that half share—to which Amat had no right of inheritance—became *charian laki-bini* and so must now *tinggal* to Minah, who is in any event properly chargeable with the funeral expenses.

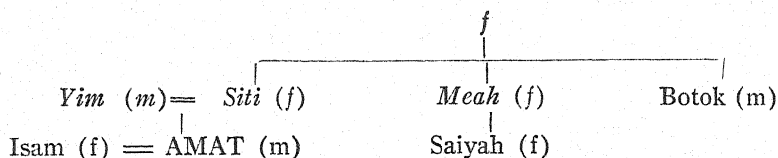
The *charian bujang* half was *pembawa* of the marriage and must now *kembalek* to Kepam who is the nearest female relative in the tribe of origin of the deceased."

*Order*.—One half to Minah—one half to Kepam.

## Re AMAT bin YIM dec.

*Land Case 222/24.*

*Charian laki-bini* which is inherited by the son of the acquirers ranks as *harta pembawa* of the son's marriage and on his death it reverts to his *waris*.



Siti and Yim acquired E. 579 Chengkau during their marriage; they planted it with rubber; they had no daughters; their son Amat was married to Isam. Yim died, and Amat succeeded to the land, Siti making no objection. Siti died and lastly Amat died.

Isam claimed the land on the ground that it was obtained by Amat during his marriage to her. Saiyah contested the claim, and Botok also made a claim based on an allegation that he had discharged Amat's debts. These debts however were not secured on the land by registration nor were they by the custom chargeable on this land, being purely personal debts.

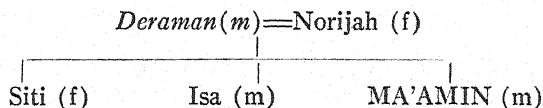
E. E. PENGILLEY, Esq., *Collector, Rembau*:—"I am of opinion that the half share of E. M. R. 579 Chengkau left by the deceased Amat bin Yim and obtained by him by inheritance from his father Yim must be regarded as *harta pembawa* for the following reason:—As far as Yim and his wife Siti were concerned the land was *tanah charian* and as such on Yim's death should have vested in Siti for the benefit of the female issue of the marriage. There being no female issue I think the land must be regarded as vesting in the male issue, Amat, for his enjoyment during his life time only with reversion to the female relatives of Siti. That being so, it should now on Amat's death go to Siti's niece and Amat's cousin, Saiyah binti Hitam. The other applicants, Botok and Isam, base their claims partly on relationship and partly on payment of debts. I have dealt with the question of relationship and come to the conclusion that Saiyah is the relative entitled to the land. The matter of payment of debts is not one that can be adjudicated on under the Land Enactment—the parties must apply for any relief they desire against the new owner of Amat's land to the Civil Court I therefore order that the half share of E. M. R. 579 Chengkau registered in the name of Amat bin Yim now deceased be transmitted to Saiyah binti Hitam."

Isam appealed.

C. W. HARRISON, Esq., *Commissioner of Lands*, dismissed the appeal. No judgment was delivered on appeal.

**Re MA'AMIN dec.***Land Case 76/26.*

A man's share in the *charian laki-bini* of his parents reverts to his sisters, following the rules for ancestral property.



The land in question was originally *charian laki-bini* of Deraman and Norijah; on the death of Deraman the Collector transmitted the land to the sons and daughter equally, they being adult and the widow making no claim.

Now, on the death of Ma'amin,

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted Ma'amin's one-third share to Siti.

[*Note.*—The point is that distribution once made is final; the other son, Isa, had no further claim. See also the appellate judgment in *Re Kahar dec.* at page 131.



**Re MANAP dec.**

*Land Case 57/18.*

Manap bought rubber land from his maternal brother Maisin. Less than two years later Manap died, leaving a widow but no children.

Maisin, claiming to represent his mother, contended that the land was *charian bujang* and ought in the circumstances to be transmitted to him.

The widow claimed that the land was *charian laki-bini*.

W. R. BOYD, Esq., *Collector, Rembau*, found as a fact that Manap was married at the date of the purchase and transmitted the land to the widow accordingly.

Maisin appealed.

For the appellant *Harte-Lovelace* contended:—

- (a) that the land was *charian bujang*;
- (b) that if it was *charian laki-bini* it should be divided between the widow and the family of deceased, *vide* Parr and Mackray at p. 76.

The Hon. Mr. A. H. LEMON, *British Resident*, held that the land was *charian laki-bini* and, as there was no female issue, should be divided between the widow and the family of Manap represented by Maisin.

**Commentary.**

No evidence of custom was given, but even so it is most surprising that Mr. Lemon should have disregarded his own decision in *Hassan v. Romit*. (p. 63).

There was no evidence as to who paid the funeral expenses.

This case is entirely isolated; the circumstances were very unusual—the land having been purchased from the husband's own family.

The case has never been followed, and it is submitted that it is overruled by *Niah v. Alias* (p. 81). E.N.T.

[*Note*.—This Port Dickson case is interposed here, though it has no direct bearing on the *adat*, because it has not been reported elsewhere and without it the declaratory decree in C. S. 16/27 might be thought *ultra vires* the Court of a Magistrate. The later decision in *Talib v. Imai*, (p. 84). Shews that the Magistrate was right in holding that he had jurisdiction to try a declaration suit. E.N.T.]

## OH TEE NAM v. VYRAVAN.

*Port Dickson Civil Suit 14/26. R.S.C. 50/26.*

The Court of a Magistrate has jurisdiction to decree specific performance even of a contract to transfer land held under Grant.

By an agreement in writing dated 7th May, 1926 the defendant undertook to sell and transfer to the plaintiff 29 acres of agricultural land in the Coast district, comprised in Negri Sembilan Grant No. 9570, in consideration of \$250, of which \$10 earnest money was paid on execution of the document. The plaintiff subsequently tendered the balance, \$240, in accordance with the agreement but the defendant failed to execute the necessary memorandum of transfer; the plaintiff then instituted this suit praying for an order for specific performance of the contract.

The Magistrate referred to the Judicial Commissioner the question whether the Court of a Magistrate had jurisdiction to hear and determine the suit; he pointed out that the specific Relief Enactment contains no definition of the term "Court."

It appeared that the same doubt had once arisen at Ipoh but the Magistrate there had admitted a similar plaint after consideration of the following arguments:—

- (a) § 59 i (b) of the Courts Enactment, 1918 is enacted in very wide terms and contains no words of limitation as to immoveable property;
- (b) mere absence of machinery to execute the decree would not take away the jurisdiction so conferred;
- (c) a method of execution is in fact provided by §§ 225 *et seq.* of the Civil Procedure Code, 1918;
- (d) the plaint did not contain a prayer for any order on the Registrar of Titles.

DINSMORE, J. C.—"Inform the Magistrate, Port Dickson, that he can receive the plaint, hear the suit and give specific performance as requested. But as the word "Court" in the Registration of Titles Enactment means the Court of a Judicial Commissioner, a Magistrate cannot execute his own decree—he should send it under § 225 of the Civil Procedure Code, 1918 to the Court of a Judicial Commissioner for execution."

The plaint was admitted accordingly and W. A. WARD, Esq., *Magistrate, Port Dickson*, finding for the plaintiff, decreed specific performance as prayed.

There was no appeal, and the defendant obeyed the decree, so the question of execution never arose.

[The learned Judicial Commissioner appears to have overlooked the possibility of executing such a decree under § 262 of the Code.]

## Re PUAN dec. (and connected cases.)

### PREFATORY NOTE.

This extraordinary series of suits and land cases is reported in chronological order for the sake of clearness. It illustrates many important principles and rules of the *adat*, several of which were judicially established for the first time. It is particularly noteworthy in that almost every one of the numerous issues which may arise on dissolution of a marriage did actually arise in respect of the marriage of Puan and Amun.

The main facts were these:—Puan was married to Amun in 1913; Puan's father died in 1919 and a dispute arose about his property; Puan's brother Talib died in 1920 and his property became involved in the dispute; that matter was never properly settled—the family merely came to a truce under a threat of resumption by the State; consequently, when Puan died in 1925 and the same property again became the subject matter of litigation, the old contentions were revived. The law of procedure made it impossible for the land and the chattels to be the subject matter of one suit and consequently it was impossible for the Collector to enquire fully into the various points at issue; he transmitted most of the land to the infants themselves, instead of to a trustee, thereby leaving undecided the most important question of all—*viz.*, who was to be their guardian.

Amun took advantage of the situation in two ways—he removed all the moveable *harta dapatan* to his mother's house (an action barely distinguishable from criminal breach of trust) and having married into another tribe he took the children to the new wife's house. As neither Puan's family nor either of the two solicitors they employed was capable of stating the real grounds of complaint the Commissioner of Lands refused to reopen the transmission case. Amun had succeeded to the only lot *charian* land in Puan's name and he also recovered the value of some *charian* timber (the suit being so framed as to preclude any enquiry into the real issues). At this stage, therefore, Amun was in possession of every single item of his deceased wife's *charian* property and also of some ancestral property of her family—a most flagrant violation of the custom.

Puan's surviving brother, Kassim, repeatedly petitioned for redress to the Resident, who had then no appropriate legal power but whose enquiries led to the institution of the civil suit, which the Commissioner had long before suggested, and eventually the whole matter was reopened and the earlier decisions in substance reversed.

For many months Kassim and Amun haunted the precincts of the Court, even when they had no proceeding pending, in a manner painfully reminiscent of Miss Flite and the "Man from Shropshire," and even now the litigation arising indirectly out of the main causes has not been concluded.

E.N.T.

**Re BADOH dec.***Land Case 23/19.*

1. Burial expenses are a charge upon the *charian* property of the deceased, and should be limited to that amount.

2. If the *charian laki-bini* property is not divided on the death of the wife, then on the subsequent death of the husband the whole devolves on the issue of the marriage of acquisition—subject to the question of funeral expenses (which may or may not be chargeable on this property).

Badoh was married to Sa-Erut, and they acquired three lots of land, E. 637, 730 and 1424 Tanjong Kling, which were registered in Badoh's name. They had four children, Kassim, Siah (or Sawiah), Puan and Talib.

Sa-Erut died and Badoh married Beah, with whom he acquired E. 659 Bongek which also was in his name.

Badoh died and Kassim paid the funeral expenses; a family dispute about the property arose and meantime Talib died, leaving one lot of land which became involved in the dispute.

G. A. de C. de MOUBRAY, Esq., *Collector, Rembau*:—"E. 637, 730 and 1424 on his remarriage became *harta pembawa*; it appears to me, following Mackray, that these should be divided between the female issue.

Beah, who wants to go on pilgrimage, asks for an urgent decision as to E. 659. Kassim proposes to divide this between himself and Beah—Siah and Puan have no objection—order made accordingly."

\* \* \* \* \*

(After six months the case came on for further hearing  
before the same Collector.)

\* \* \* \* \*

"As Talib leaves no heirs the land must be divided into three, subject to the settlement of the funeral expenses.

The Custom is that when an individual leaves *charian* property his funeral expenses should be kept within these bounds."

[It appeared that the burial expenses of Talib, amounting to \$115, were paid by Puan, but Siah was prepared to repay this \$115 to Puan provided that Puan agreed to set off a share of the profits (*query*—proceeds of rubber sales?) which Puan had received from Talib's land; the Collector assessed this share at \$50.]

*Ordered*, subject to the payment of \$65 by Siah to Puan, that Kassim, Siah and Puan be registered as owners of undivided third shares of E. 637, 730 and 1424.

[A few days later Siah paid the \$65 to Puan in the presence of the Collector, but they did not pay the registration fees till nearly two years later. Eventually however both the orders were duly registered.]

### Commentary.

1. Strictly, the burial expenses of Talib had nothing to do with this proceeding which concerned the property of Badoh; it would however have been impossible for the Collector to settle the case had he excluded that question, for it was the one really at issue between the parties.

2. The Collector revised his opinion and awarded an equal share to the male issue, Kassim; the later case *Re Kahar dec.* (p. ) shews that his final decision was correct, for the land in question was originally *charian* of the parents of the three claimants and as against Beah was therefore *terbawa* rather than *pembawa* which latter would have returned to Badoh's *waris*, who were never parties to the case.

3. It was not explained why Siah should pay the whole of the burial expenses, in so far as these did not come out of the Estate, and yet share equally with the other two but as Siah agreed to this it is probable that there were other complications of which no evidence was given.

4. As Talib died after Badoh, Talib's share should really have been transmitted to his two sisters, not to his sisters and brother equally (*Re Ma'amin dec.* p. 145).

E.N.T.

**Re TALIB dec.***Land Case 125/20.*

[This case decides no particular point of *adat*—it is reported only to elucidate the cases which follow.]

Talib died unmarried in 1919. His sister Puan filed a claim to his one lot of land, E. 660 Bongek, on the ground that she had nursed him and thereby incurred expenses amounting to \$300.

His other sister, Siah, claimed half the land on the ground that she had paid a share of the funeral expenses, \$65. (*Query*—the same \$65 awarded in L. C. 23/19 *supra* p. this plea was filed one month after the date of payment.) The parties took no steps to bring the action to trial and eventually the Collector issued a notice of his intention to resume the land in default of registration of a successor to the deceased.

Puan then appeared and claimed; Siah withdrew her claim in favour of Puan, and Kassim, their brother, agreed to Puan having the land; in view of these facts the *lembaga* also agreed.

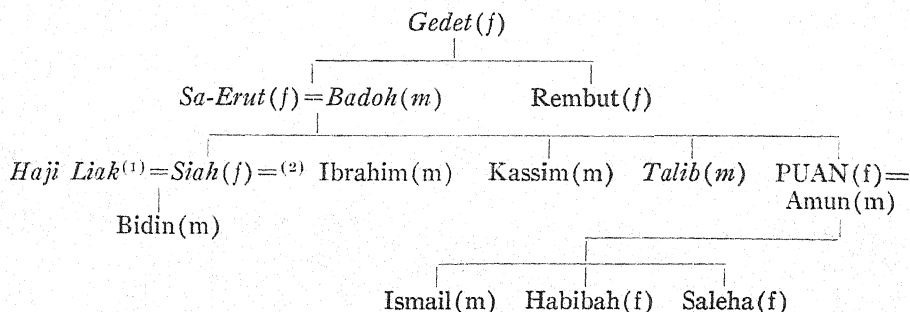
E. E. PENGILLEY, Esq., *Collector, Rembau*:—transmitted the whole of the land to Puan.

*Note.*—It does not appear that the Collector thought Kassim's consent was really necessary; *charian bujang* reverts to the mother or failing her (as here) to the sisters—a brother has no claim.

**Re PUAN dec.**

*Land Cases 125 & 128 of 1925. D.O.R. 20/26. C.L. 114/26.*

Property inherited from her own family by a married woman ranks as *harta dapatan* of the marriage.



The family of Sa-Erut had been engaged in disputes with one another and with Amun for many years, the property of Talib (*supra*, p. 152) being the chief bone of contention. In 1925 Siah died and a few weeks later Puan died. The petitions for distribution of the property of Siah and Puan were consolidated.

It was agreed that the ancestral land descending to Siah, (who had no daughters) and to Puan, devolved on the two infant daughters of Puan and the trial Collector (*Reid*) ordered these lots to be registered in the names of the infants themselves, [this was illegal, even under the Enactment of 1911, but the Commissioner of Lands had generally advised it. E.N.T.] thus leaving undecided the main question, *viz.*, who was to be responsible for the land during their minority?

Puan was also the proprietress of E. 660 Bongek, the classification of which was disputed.

Amun contended that the funeral expenses of Talib were paid out of *charian laki-bini* money of himself and Puan and that since these expenses were chargeable on Talib's land it followed that the share of that land which was transmitted to Puan, over and above the share which she would in any event have inherited as *waris* of her bachelor brother, should rank as *charian laki-bini*.

Kassim contended that he, Kassim, paid the funeral expenses of Talib and that he and Siah for-went their one-third shares (*sic*) in Talib's land on the understanding that Puan's children would eventually succeed to it.

1929] *Royal Asiatic Society*.



E. 1797 Tanjong Kling was a new lot of which Puan was the first owner; Amun contended that it was *charian laki-bini* and proposed that it should be transmitted to the children; Kassim claimed it for himself on the ground that he, Kassim, had cultivated it and paid the rent.

J. S. W. REID, Esq., *Collector, Rembau*:—"The question of Talib's funeral expenses would appear to be beside the point. E. 660 Bongek was transmitted to Puan as her own personal *dapatan* property; it should now therefore be transmitted to her daughters.

With regard to E. 1797 the presumption must be that this land, acquired two years before Puan's death, is *charian laki-bini*. Kassim's claim is not one based on relationship to deceased but on work done to the land and actual occupation; he can file a separate claim under section 37 but has no *locus standi* in the present transmission case."

He accordingly transmitted E. 660 to the infants; he transmitted E. 1797 to Amun.

[*Note*.—The Collector went to England immediately after the trial, and consequently, though there were further proceedings, he never delivered any grounds of judgment or statutory report; the note reported above was made at the hearing.

It appears that he did not understand Amun's argument about E. 660, which was at least relevant; he was, of course, correct in rejecting Kassim's claim to E. 1797 but there is no indication of his reason for transmitting it to Amun, instead of to the children as Amun himself proposed; there was no enquiry as to the other *charian* land of the marriage. E.N.T.]

Kassim applied to the Commissioner of Lands to set aside or vary the orders but his solicitors failed to make clear the real ground of complaint and the Commissioner (*M. D. Daly, Esq.*), rejected the applications on the grounds that Kassim's claims were enforceable, if at all, under § 37 of the Enactment or in the Civil Courts, and that no person has any right to select whether he will proceed under § 37 or § 38 ii in respect of land the subject matter of an order under § 37 A.

[*Note*.—§§ 9, 10 and 15, i and ii of the Customary Tenure Enactment 1926 correspond exactly to §§ 37, 37A and 38 i and ii of the Land Enactment 1911.]

Kassim then addressed a series of petitions to the Resident who, having caused the Records to be examined, advised Kassim to bring a civil suit against Amun; three suits were instituted in rapid succession, and are reported here:—

C. S.	12/27.....	p. 156.
C. S.	16/27.....	p. 158.
C. S.	29/27.....	p. 160.

## AMUN v. KASSIM.

C. S. 108/26.

[This case is reported only to elucidate the subsequent cases.]

In 1923 the plaintiff, who was married to the defendant's sister Puan, bought timber to the value of \$65 and stored it under his wife's house. In 1925 Puan died and the plaintiff moved to his mother's house leaving the timber behind; during the dispute about Puan's land (L. C. 125/25, *supra*, p. 153) the plaintiff claimed the timber and the defendant refused to give it up. Subsequently the defendant sent part of it to the house of one Mahmud; the balance was never accounted for.

The plaintiff sued for the return of the timber or its value; it was admitted that Mahmud held the portion in his hands to the order of defendant.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—held that defendant had converted the timber and gave judgment for the plaintiff.

The portion in Mahmud's custody was delivered to the plaintiff under a Warrant of Execution; the value of the balance was set off against the decree in C. S. 29/27 (*infra*, p. 160). Half the total value was subsequently recovered back again by the family of defendant in C. S. 15/28 (*infra*, p. 170).

[*Note*.—This confusion arose because the defendant in this suit never disclosed his real defence—*viz.*, that the *charian* of the marriage had never been apportioned. In any case it would have been impossible to go into that general question on the trial of a suit for merely one item of the property but if the real defence had been set up it would have been possible to adjourn this suit pending proper administration of the Estate.]

**KASSIM v. AMUN.***Civil Suit 12/27.*

A male relative, even of the same tribe, is not entitled to be the guardian of infants or to maintain a suit on their behalf if there is a competent female relative.

The family tree is on page 153.

The plaintiff alleged that after the death of Puan (*v.s.* page 153) the defendant removed her jewellery, of which particulars were given, to the total value of \$286; that part of the said jewellery was given to the deceased by her parents before her marriage and that the balance was inherited by her from Talib; that the defendant had refused to return these effects, on demand. The plaintiff claimed the specific articles of jewellery, or alternatively their value.

It was proved that the articles in question were in Puan's house at the time of her death but that they were not produced at the 100th day feast on which occasion the dispute arose; the plaintiff's *lembaga* had failed to settle the matter then because (among other reasons) the defendant's *lembaga*, who was a very infirm old man, was not present.

The plaintiff's chief witness was Rembut who, however, claimed that she herself was entitled to the jewellery as *harta dapatan* of the marriage of Amun and Puan.

An independent *lembaga* gave evidence that the *harta dapatan* should devolve on the children of the deceased and that if the widower is *jeput* the female relatives of the deceased wife are the proper guardians of the children.

E. N. TAYLOR, Esq., *Magistrate, Rembau*, then dismissed the suit on the ground that the evidence disclosed no right of action in the plaintiff; he advised Rembut to bring a suit for the relief which she claimed.

*Note.*—It would, of course, have been possible to substitute or add Rembut as plaintiff but pleadings cannot be so amended as to convert a suit of one character into a suit of another character; the plaint in this suit was confined to the jewellery and completely failed to disclose the main cause of action, namely the wrongful custody of the infants; it was only after hearing the evidence in this case that the Magistrate discovered, the real question then at issue between the parties. Once discovered, that question was speedily brought to trial but the parties contrived to conceal the existence of other property which ought to have been brought to account at the same time; they were, however, largely the victims of a system of procedure wholly unsuitable to their needs; the "Small Estates" Law had not then been enacted, and owing to a technical

defect it would in any event have been inapplicable. It is just possible that an Administration Suit in the Supreme Court, if commenced immediately after Puan's death, would have reduced the confusion but in every single recorded case in Rembau in recent years such proceedings have been abortive so the parties cannot be blamed for avoiding them as long as they could; they were eventually forced through that procedure after most of the disputed questions had been decided (*vide infra*, page 167).

**REMBUT v. AMUN.***Civil Suit 16/27.*

The proper guardian of an infant is not the father but the *waris* and after *jeput* or remarriage she can recover the actual custody of the children.

A decree in pursuance of the *adat* affecting persons may be enforced by the *lembagas* without any process of Court.

Immediately after judgment in Civil Suit 12/27 (*supra*, p. 156) Rembut brought a fresh action:—

- (a) for a declaration that she was the guardian of the infants Habibah and Saleha;
- (b) for the recovery of the jewellery belonging to them or its value, \$286.

The defendant produced one pair of gold bracelets (*gelang tangan mas*) Exhibit A, valued at \$68.

The evidence given in Suit 12/27 *supra* was repeated and amplified but it was not shewn whether or not the defendant had ever been properly *jeput*; it was proved, however, that he had married again and taken the two small daughters to live with his new wife who was, of course, of another tribe, and that he had refused to surrender them to their *waris*, Rembut. It was also shewn that the moveable property of Talib (who died a widower in Puan's house) would be inherited by his *waris*, Puan, and become *pesaka* of her daughters; this evidence was reinforced by proof that Talib's immovable property had been so transmitted by the Collector (L. C. 125/20, page 152 and 125/25, page 153).

The defendant's *lembaga* agreed that the plaintiff was entitled to be the guardian, and declared that he had already told the defendant to send the children to her.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"I give judgment for the plaintiff for the declaration as prayed and order the defendant to give the custody of the infants Habibah and Saleha to the plaintiff within 30 days. The pair of gold ornaments Exhibit A and \$218 to be deposited in Court during the minority of the infants."

The *gelang tangan mas* were duly sealed and deposited in the Magistrate's safe.

On the following Court day the parties and their respective *lembagas* all appeared without any process. The plaintiff applied orally for the general assistance of the Court, averring that the defendant had locked up the children and so prevented her from

taking them into her custody. The two *lembagas* submitted that, subject to the approval of the Court, the children ought to be *jeput* in the presence of both the parties to the suit, of both their *lembagas* and also of the *lembaga* of the defendant's new wife; the last mentioned was sent for and agreed. The plaintiff's application was then adjourned. Two days later the Court was informed that the children had been *jeput* by the three *lembagas* and that proved to be a final settlement of the question of custody.

No application for execution of the decree as to the \$218 was made until the following year. Eventually the defendant's last piece of land, E. 661 Bongek, was attached and sold but several other creditors also attached. The pro-rata share recovered for the infants amounted to \$69.95 and this sum, together with the gold ornaments was deposited with the Public Trustee until they should attain majority (P. T. 119/28. Trust No. 133.)

*Note.*—As to the jurisdiction to make a declaratory decree see *Oh Tee Nam v. Vyravan*, and note thereto, p. 147.

**KASSIM v. AMUN.***Civil Suit 29/27.*

If a woman dies in wedlock the funeral expenses and also the debts incurred during the marriage are chargeable on the *charian laki-bini*.

There were three causes of action but one of them involved no issue of *adat* and is omitted from this report.

The plaintiff sued:—

- (a) for the return of \$74 lent to the defendant;
- (b) for reimbursement of the cost of cultivating E. M. R. 1797 Tanjong Kling.

As to (a) the evidence shewed that after the death of the defendant's wife, Puan, in 1925 the plaintiff had purchased necessities for the funeral feasts to the value of \$74; that a dispute arose between the parties at the 100th day feast and that the plaintiff's *lembaga* had failed to settle the matter because (among other reasons) the defendant's *lembaga*, owing to advanced age and infirmity, was unable to attend. In consequence of this dispute the parties were unable to settle their financial affairs at that feast—the proper time for settlement when both families were assembled—and the defendant was therefore not formally *jeput*.

As to (b) it was shewn that during the life-time of Puan the plaintiff had paid the expenses of clearing and planting the land in question, which was *charian laki-bini* of the defendant and Puan. After the 100th day feast but before this trial the defendant had obtained transmission of the land to himself (L. C. 125/25, page 153).

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"...As to the first cause of action \$74 is probably less than the total cost of the feast; it is clear that Kassim did actually buy such things as would be needed.....the feast was held.....Amun is liable (as the *lembaga* says). Judgment for the plaintiff on this issue.

As to the land, it is clear to me what the trouble is. Amun has obtained the land (in L. C. 125/25 which was several times referred to) and the dispute has been continued ever since Puan's death. The defendant succeeded to the land because the land was originally *charian laki-bini* and Puan was still on the register when she died. According to the custom defendant is clearly liable for the debts incurred during the marriage and in my opinion he ought to reimburse Kassim. It is proved by good and credible witnesses that Kassim paid for the development of the land....."

[The remainder of the judgment dealt with assessment of the amount, which was purely a question of fact.]

On the advice of counsel Amun decided not to appeal.

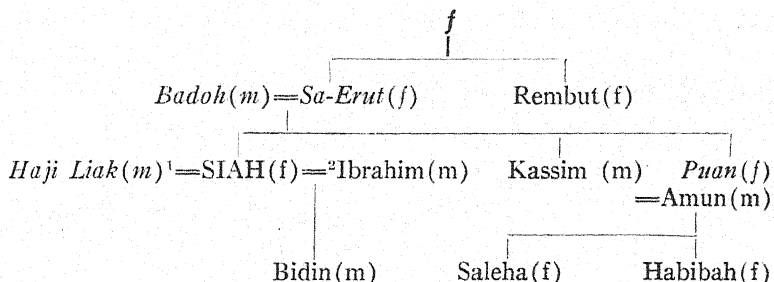
The decree was satisfied without execution.

As to the final adjustment of these debts and funeral expenses see *Re Puan dec.* (Administration Suit 5/27) *infra*, at p. 167.

**Re SIAH dec.***Land Case 128/25.**D.O.R. 20/26. C.L. 114/26.*

If the claim of a minor is not put before the Collector in the course of a transmission enquiry a separate action may afterwards be brought against the transmittee on behalf of the minor.

This case was originally heard with *Re Puan dec.* (page 153), some of the parties being interested in both cases. Siah's ancestral land was transmitted to the daughters of Puan, without dispute.



Siah was also the proprietress of a half-share in E. 362 Selemak which she acquired in 1911 during her marriage to Haji Liak. After the death of Haji Liak, Siah married Ibrahim; there was no issue of this marriage.

J. S. W. REID, Esq., *Collector, Rembau*:—"..... I am more doubtful about E. 362 Selemak but there I think it must be presumed that Ibrahim, as Siah's husband since (approximately) 1915, would share the *charian* expenses."

He accordingly transmitted the half share to Ibrahim.

This matter remained in abeyance pending disposal of the numerous connected proceedings but eventually Rembut applied to the Commissioner of Lands to reopen the abortive application to him under § 38, ii, of the Land Enactment of 1911, or alternatively to advise her as to her proper remedy. She obtained a certificate by the A. D. O. Rembau that there were substantial grounds for contending that the rights of her infant wards were prejudiced by the order of the Collector.

After consultation with the Hon. Mr. W. S. GIBSON and afterwards with the Hon. Mr. W. BURTON (each being Legal Adviser, F.M.S. at the material time)—

C. C. BROWN, Esq., *Commissioner of Lands*:—held that since the minors were not represented at the original hearing and their 1929] *Royal Asiatic Society*.



case not put before the Collector there could be no *res judicata*; he accordingly directed Rembut to apply, under § 37 of the Land Enactment of 1911, to be registered as owner of the land which she claimed on behalf of the infants.

After consultation with G. M. KIDD, Esq., *District Officer, Tampin*, the Collector added the words "Customary Land" to the disputed titles, and dealt with the claim under the equivalent section 9 of the Customary Tenure Enactment 1926. The case is reported —*Bidin v. Ibrahim*, page 163.

### Commentary.

This part of the litigation was seriously complicated by the changes in the law which occurred while it was pending. Kassim had long before sought to bring an action under § 37, but the Collector (*Taylor*) had refused to admit it on the ground that § 37 conferred no power to review an order made by a previous Collector under § 37A and on petition the Resident had declined to interfere with this refusal. This view of the law is undoubtedly correct if the parties to the new claim are the same as the parties to the former one.

It appears, however, from the Legal Adviser's opinion that if the claim of a minor were overlooked in proceedings under the "Small Estates" law or under § 10 of the Customary Tenure Enactment 1926, a separate action to recover the land would lie under § 107 of the Land Code, 1926 or § 9 of the Customary Tenure Enactment, 1926, respectively.

Sections 9 and 10 of the Customary Tenure Enactment correspond exactly to sections 37 and 37A of the Land Enactment of 1911. § 107 of the Land Code, 1926 is more comprehensive, but it clearly includes, *inter alia*, most of the matters provided for under section 37 of the older Enactment.

It is submitted, however, that this case, though a valuable precedent, should be followed only with extreme caution; grave harm would result if it became common to reopen old cases whenever anyone alleged that his interests had been overlooked when he was an infant. Moreover public policy requires the judiciary to guard with especial jealousy against the encroachment of equitable principles into the domain of registration of land; it is better that rigid application of the doctrine of sanctity of title should lead to isolated cases of so called "injustice" than that occasional relaxation of legal strictness should undermine the public confidence in that security of tenure on which all the local industries are founded. (See also the remarks of Innes J. C. in *Ong Tin and another v. The Seremban Motor Garage*, I F.M.S. Rep. 313 *et seq.*)

**BIDIN v. IBRAHIM.***Land Case 121/27.*

After the death of both husband and wife their *charian laki-bini* devolves upon the issue of the marriage notwithstanding that it may in the meantime have been *harta dapatan* of subsequent marriages of the woman.

The onus of proving *untong* is on the person who claims it.

The family tree is on page 161.

The petitioner appeared by his *waris* and *de facto* guardian, Rembut. In her petition to the Commissioner of Lands (page 161) Rembut had claimed that this land should be transmitted to the daughters of Puan; she now said that since the land was originally *charian laki-bini* of Siah and Haji Liak, both of whom were dead, it ought to be transmitted to their infant son, Bidin. Her *sembaga* supported the claim but added that the *untong* on such *harta dapatan* as is new land and not inherited, ranks as *charian* and is apportionable.

The respondent did not appear but his *sembaga*, in evidence, agreed that the land in question was, in fact, *harta dapatan* of the marriage of Siah and Ibrahim, and should now devolve on Bidin subject to Ibrahim's claim to half the *untong*. He added, however, that the onus of proving *untong* is on the person who claims it, and since neither Ibrahim nor his family had moved in the matter he, the *sembaga*, admitted Bidin's claim to the whole of the land.

E. N. TAYLOR, Esq., *Collector, Rembau*:—accordingly *transmitted* the land to Rembut as trustee of Bidin.

*Note.*—Each *sembaga's* declaration was of peculiar value because it was against the interest of his own *anak buah*.

**SALEHA and HABIBAH v. AMUN.***Land Case 120/27.*

Where the wife dies first leaving young children the *waris* of the wife are entitled to recover on behalf of the children (at least) one half in value of the *charian laki-bini* property after allowing for funeral expenses and debts; they can recover this share against the widower even if it is land registered in his name.

The onus of proving *pembawa*, or the declaration thereof, is on the man.

The family tree is on page 153.

Following the decision of the Commissioner (reported at p. 161) Rembut now brought her action claiming on behalf of the infant children their share in the five lots of land which were *charian laki-bini* of Puan and Amun. Originally four of these were in Amun's name and he had obtained the other in L. C. 125/25, (p. 153). He had therefore retained the whole of the *charian laki-bini* even after his marriage into the Paya Kumboh tribe; he had sold one lot but still held the remaining four, all unencumbered, at the date of this trial.

The existence of the son, Ismail bin Amun, a boy of eight, had not previously been mentioned in any pleadings and he was therefore not included in the decree in C. S. 16/27 (p. 158) but it was shewn that he had been entrusted to Rembut by the *lembagas*, at the same time as his sisters.

The claim as amended at the trial was that one half of all the five lots should be transmitted to Rembut as trustee for the three children equally. Rembut also claimed half the moveable *harta charian laki-bini* and was informed that as the law then stood that claim could only be entertained in a separate action.

The respondent contended that one of the five lots, E. 661 Bongek, was bought out of *wang pembawa* and therefore should not be reckoned as *charian laki-bini*, but his witnesses could not shew that the *pembawa* was ever declared. He also revived his contention that E. 660, which had been transmitted to the daughters (L. C. 125/25, *supra*) should be reckoned as *charian* because it was transmitted to Puan in consideration of the funeral expenses of Talib, paid by her.

The *lembagas* of the parties and several independent *lembagas* testified as to the *adat*; they agreed that the whole of the *charian laki-bini* property, moveable and immoveable, should be divided equally between the widower, and the children collectively irrespective of sex; that the land may be jointly registered or specific lots allocated to each party according to circumstances; that division

ought to be arranged by the two families and their tribal chiefs at the hundredth day feast, the day of *jeput*, after allowing for funeral expenses and the joint debts of the marriage; that failing agreement then, division can be made later, and if necessary by the Collector or Court; that the shares of infants should be registered in the names of their *waris*, their father not being competent to be their guardian, either in law or in fact, if he marries into another tribe. These witnesses were clear that both *pembawa* and *dapatan* must be declared or proved and that the onus of proof is on the claimant.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The witnesses are unanimous that the *charian laki-bini* property is to be divided equally between the widower and the children (except as to any *sawah* or *kampung*—an exception that does not apply to this particular case); *Re Kahar dec.* [reported at p. 129] goes to shew that the division need not necessarily be equal, but as the petitioner claims half I am of opinion that equal division is proper in this instance.

The burial expenses of Puan deceased were a first charge on the property now in question. In so far as they were not paid by Amun in the first instance, the family of Puan have already recovered in Civil Suit 29/27. Respondent is entitled to retain the equivalent of these expenses before dividing with his children.

I am not satisfied that E. 661 was *pembawa*; the present Dato Ngiang was not *lembaga* at the material time, but respondent's relatives are still alive and they do not say it was ever declared. I am satisfied that the onus is on respondent according to the *adat*, and he has not discharged it. I therefore declare that E. 661 ranks as *charian* of the marriage.

It is extremely difficult to divide these lands up equally. It is not feasible in this instance to register half interests in each lot because the parties have been at daggers drawn for many years—this is only one phase of the bitterest and longest series of actions and suits that has occurred in Rembau for a very long time—and if they are co-owners each lot will only be a bone of further contention."

\* \* \* \*

[The Collector discussed the evidence of fact and held that E. 661, plus the lot which Amun had already sold, amounted roughly to half in value of the five *charian laki-bini* lots and were the most suitable to be allotted to Amun.]

\* \* \* \*

"It is not possible to deal with the moveables in this proceeding.

*Order*:—Transmit E. 1797 Tanjong Kling, 973 and 1004 Nerasau to Rembut binti Pihî as trustee. Enter caveat to protect the unregistered one-third interest each of Ismail bin Amun, Saleha and Habibah binti Amun."

Amun appealed, on the grounds:—

- (a) that E. 1797 “had been tried before” (L. C. 125/25) and transmitted to him;
- (b) that a half-share in E. 1004 was *charian bujang*;
- (c) that a half-share in E. 973 Nerasau and in E. 933 Batu Hampar ought to have been transmitted to him.

In the Statutory Report the trial Collector reviewed the history of the dispute and the former proceedings, and distinguished *Re Kahar dec.*, (page 129) where the issue were adult at the time of the wife's death, from this case where they were still infants. He continued:—

“Amun now appeals to the Resident and *Undang* on three grounds viz:—

- (a) the question of E. 1797 Tanjong Kling is *res judicata*.  
As to this firstly it is obvious that if half of the property is to be awarded to the children, the whole must be brought into account—there are several authorities for this—and secondly, the question of *res judicata* has been most carefully considered by the Legal Adviser and the Commissioner and they advised Rembut to bring this action. L. C. 125/25 was contested between Amun and Kassim on grounds of cultivation; this case is between the infants and Amun on grounds of succession. Neither the parties nor the causes of action are the same;
- (b) that half of E. 1004 Nerasau was *charian bujang*. This is an entirely new point of which no evidence whatever was given at the trial;
- (c) that half of E. 973 Nerasau and 933 Batu Hampar ought to be transmitted to him.  
This is sheer nonsense. Amun has already sold the whole of E. 933 Batu Hampar for his own exclusive benefit, and it is not mentioned in the order against which he appeals.”

The Hon. Mr. E. C. H. WOLFF, *British Resident*, and Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—“We consider the record and the Collector's report and express our concurrence is the three grounds on which the appeal should be rejected as set out in the Collector's report.

We therefore dismiss the appeal and confirm the judgment of the Collector.”

**Re PUAN dec.***Rembau Administration Suit 5/27.*

On the death of a wife her funeral expenses and the debts of the marriage are charges on the *charian laki-bini* property, primarily on moveables.

If the woman leaves issue of the marriage her *waris* are entitled to recover, on behalf of the children, (at least) one half of the balance of the *charian laki-bini*.

The proper time to arrange the division is the hundredth day; if, in default of agreement then, division is made subsequently by the Court it is to be made with regard to the assets as at that day.

Immediately after judgment was given by the Collector in L. C. 120/27 (page 164) Rembut filed her petition for letters of administration over the moveable property, of which she gave particulars.

Amun contested the petition. He admitted that all the property scheduled was *charian laki-bini* of himself and Puan but he contested Rembut's valuation.

It appeared that Amun had disposed of some of the property after the hundredth day, that one buffalo had died "in his hands", and that he still had some of the property in his possession.

Evidence of custom was similar to that given in L. C. 120/27 (*supra*).

E. N. TAYLOR, Esq., *Deputy Registrar, Rembau*:—"For the purposes of this adjudication I find that the estate consisted of the following [a list of chattels, with their values, totalling \$559]. The immoveable portion of the estate has already been dealt with under the Land and Customary Tenure Enactments.

It is clear *adat* that Rembut, the trustee and *waris* of the infants, is entitled to recover on their behalf one half of the *charian* of the marriage of deceased and respondent.

It is also clear *adat* that the burial expenses of deceased are a first charge on the *charian* property.

The family of petitioner have already recovered part of these (\$74/-) in C. S. 29/27, but respondent is entitled to deduct the total cost of the customary feasts for his late wife before dividing the balance of the assets with the children. Having regard to the evidence given in Civil Suit 29/27 I assess the amount at \$100/-. I therefore give judgment for the petitioner for a grant of letters of administration limited to the specific assets still in existence, plus a sum in cash equivalent to the difference between the total value of those chattels and one half the net value of the estate, with liberty to recover in a civil suit against the respondent the specified

assets or their value as found herein, in addition the cash equivalent of the said difference.

(It is to be noted that the expression "net value" in the last sentence means the net value after allowing for the customary funeral expenses as determined *supra*, which will be different from the "net value" for estate duty purposes where the "burial expenses" deductible are limited by statute.)

The costs of this proceeding, including estate duty, are to be paid by petitioner and respondent in equal shares.

This case illustrates very vividly the impossibility of a satisfactory administration of justice between the people of Rembau under the present procedure; when a person dies leaving an estate comprising both moveable and immoveable customary property the issues of fact and *adat* which govern their devolution are inseparable, but the law draws an artificial distinction between them and compels the land to be the subject of proceedings under the Customary Tenure Enactment, with an appeal to the Resident, and the chattels to be the subject of an administration suit, with an appeal to the Court. There is thus not only a multiplication of suits to the expense and harassing of the parties but also a real risk of overlapping or conflicting decisions, especially as to the burial expenses which are bound to be an issue in both proceedings.

The Small Estates provisions do not apply (so I am advised) because the definition of "Small Estate" in Section 177 does not embrace an estate of which the immoveable portion is excluded from the operation of Chapter XVIII by reason of Section 176. This is particularly unfortunate because the Distribution Order provided by Form E is so much better suited to Malays than a grant of letters of administration which usually leads, as it certainly will in this case, only to further litigation, to wit a suit by the administratrix to recover the property awarded to her. In a recent case (*Re Kulop Kidat dec.*, 11th July, 1927) I found it necessary to decree two separate limited grants of letters of administration and each administratrix is now suing the other thereunder.

For these reasons I direct that a copy of this record be transmitted to the Resident, for consideration in connection with the proposed amendments of the relative laws.

### Further Judgment.

Concurrently with this case there has been a similar proceeding between the same parties, before me (as Collector) under the Customary Tenure Enactment 1926. In that case the petitioner, Rembut, claimed that one half of the *charian laki-bini* land of Amun and Puan should be transmitted to her as trustee of the infants. I allowed this claim; Amun appealed to the Resident and

on 5th January, 1928 his appeal was dismissed. The decision of the Resident and *Undang* is final; it is not, of course, of necessity binding on the Court but I consider it proper to mention the fact in support of the original judgment herein. (Land Case 120/27) [reported, p. 164.]

In the course of preparation of the record of that Land Case I had occasion to examine the records of the many former proceedings between the same parties; I noticed one fact which I had overlooked at the hearing of this case, viz., that in Civil Suit 29/27 it was clearly proved that at the time of Puan's death, Puan and Amun were jointly indebted to Kassim (Puan's brother) in respect of the cultivation of their land, and Kassim recovered \$89.60 on that account. It is clear *adat* that all joint debts are to be paid before dividing the estate between the widower and the children. It was, of course, Amun's fault for not calling my attention to this point at the trial but I considered it just to rectify the omission and accordingly summoned both parties. The petitioner agreed that the omission ought to be rectified and I have therefore amended the judgment accordingly.

Respondent's grievance appears to be that by this judgment he is held liable to account to the infants for their share in the buffalo which died after the death of Puan but before the trial. Now the *adat* is absolutely clear that the proper time to arrange the division of the property is at the 100th day feast, on which occasion the widower ought to be *jeput*, i.e., formally received back into his own tribe. If, therefore, this buffalo had died during the 100 days it would clearly have been a loss to the estate as a whole and if it had died after division the loss would obviously have fallen on the party to whom it had been allotted. Actually, in this instance, the parties disputed and the widower wrongly retained the custody of the children and all the property instead of leaving the children with their own tribe and dividing the property. Amun was therefore an administrator *de son tort* and a trustee for the children of their half of the property and I hold accordingly that he is bound to make good to them their half-share in the buffalo.

An almost identical point arose in the Land Case. Amun sold one lot of the *charian laki-bini* land after the 100 days. I held that he must give an equivalent lot to the children before dividing the balance, and my decision was affirmed."

On the advice of counsel Amun abandoned his intention to appeal.



**REMBUT (as Administratrix of Puan) v. AMUN.***Civil Suit 15/28.*

[This case arose directly out of Administration Suit 5/27, *supra*, page 167.]

In pursuance of the judgment and the letters of administration granted to her, Rembut brought this suit claiming to recover from Amun the specific chattels still in his possession, or alternatively their value, and also the cash equivalent of the balance of the infants' share of the estate.

The three specified chattels were produced in Court by the defendant and delivered to the plaintiff.

*Jeff* (Advocate for the defendant) admitted the claim for the balance.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—gave judgment accordingly for the plaintiff with costs.

**ISMAIL (and others) v. AMUN.***Civil Suit 3/28.*

There is no fixed or conventional rate of maintenance for infants.

The three children of Puan, suing by their guardian Rembut as next friend, now brought an action against Amun claiming an account of the proceeds of the rubber produced from the four lots of *dapatan* land which had been transmitted to the infants in L. C. 125/25 (page 153) and of which Amun had enjoyed the rents and profits during the interval between Puan's death and the return of the children to their *waris* under the Order of Court in C. S. 16/27 (page 158). Amun had in fact maintained the children during that period, and the claim was for the difference between the estimated net value of the proceeds of the land and the estimated cost of maintaining the children.

Rembut appeared in person for the infant plaintiffs.

Jeff (Advocate) for the defendant.

It was shewn that a widower has no right whatever to interfere with the management of *dapatan* land after the hundred days and that if the proceeds of an infant's land exceed the expenses of the infants maintenance it is the customary duty of the guardian to accumulate the balance for the infant's benefit. It did not appear, however, that there is any conventional or usual rate of maintenance for a child.

The defendant claimed to have spent all the proceeds of the land on the children but he could not furnish a proper account.

The plaintiff was unable to prove the amount of the proceeds of the land because certain official documents, on which she relied, were not available though through no fault of hers.

Jeff contended that in the absence of evidence of any recognised rate of maintenance the suit must fail as it was not a claim for any ascertained or even ascertainable sum.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"On the evidence given I come to the conclusion that judgment cannot be given for the plaintiff for any determinable sum, but the plaintiff brought the case in good faith for the benefit of her wards, and but for the unfortunate fact that the cards have lately been destroyed the plaintiff might have been able to show that her figures were correct and this would probably have turned the scale in her favour. I therefore dismiss the suit but order each side to pay its own costs."

1929] *Royal Asiatic Society.*

**SIAH v. SIPIT.***Application 73/14.*

If the holder of ancestral property abandons it, the nearest relative in the tribe is entitled to take it over, but she must also accept any liabilities properly chargeable on the property.

Sipit was the beneficial owner of an ancestral *sawah*, registered in the name of her uncle as her guardian. She left Rembau with a Chinese, and her tribe lost touch with her. Siah was the nearest relative, and some years after the death of the guardian she claimed the land. The widow of the guardian claimed reimbursement of money spent by her on maintaining the property.

W. R. BOYD, Esq., *Collector, Rembau*:—assessed the amount to be paid to the widow, and on payment thereof transmitted the land to Siah.

[*Note*.—This case illustrates the fundamental principles that ancestral property is at all times held in trust for the tribe, and that all rules tend to the conservation of property in the tribe.

Similar cases continue to arise, and to be decided in the same way. E.N.T.]

**BEDAH v. NEMAH.***Land Case 113/27.*

Ancestral property is held in trust for the tribe—an absentee is entitled to recover her share from her sister, on resuming ordinary residence in Rembau.

The parties were sisters; their mother had four lots of land, two ancestral and two acquired; when she died Bedah, the younger daughter, was living at Seminyeh and Nemah obtained transmission of all the land. Afterwards Bedah instituted proceedings but withdrew them on Nemah undertaking to transfer half the land. Nemah however only transferred half of their mother's acquired land and Bedah having returned and settled permanently in Rembau, now brought this action claiming half the ancestral.

E. N. TAYLOR, Esq., *Collector, Rembau*:—*transmitted* half the ancestral to Bedah.

Nemah appealed, on the grounds:—

- (a) that Bedah's claim was barred by limitation, Nemah having been in uninterrupted possession for more than twelve years;
- (b) that in any event Bedah's claim should have failed by reason of her long delay in seeking to enforce it.

In the statutory report the trial Collector wrote—"....the defence of limitation is not available in a case of this character because the holder of ancestral land is at all times a trustee for the tribe and never the absolute owner."

The Hon. Mr. E. C. H. WOLFF, *British Resident* and Inche ABDULLAH bin DAHAN, *Undang of Rembau*:—"The appeal is on the ground of limitation and we consider that this does not apply. We confirm the order of the Collector and dismiss the appeal."

**SEMAN v. LEHAR.***Land Case 19/24.*

The holder of ancestral property is relieved of her responsibility to maintain the males of the family when they are married.

Minah had a son Seman, but no natural daughter. She adopted a girl Lehar, financed her marriage, and when Lehar herself had a daughter, Minah transferred her ancestral land to Lehar. Minah died, and Lehar's husband sold the house and took Lehar to live elsewhere—they continued however to cultivate the land. Seman was married into another tribe. A quarrel having arisen between Seman and Lehar's husband over the sale of the house and other matters Seman claimed that the land ought to be transmitted to him.

E. E. PENGILLEY, Esq., *Collector, Rembau*.—"The basis of the applicant's claim in this case was an express or implied agreement made by the respondent to return to the applicant certain pieces of land given to her by the applicant's mother and the respondent's mother by adoption in case she, the respondent, failed to "maintain" the applicant.

2. The applicant Mohamed Seman stated that when the lands were given by his mother to the respondent Lehar, the latter agreed to return the lands to him in case she failed to "maintain" him after his mother's death. No other evidence of this express agreement was brought forward and Lehar denied its existence.

3. The question also arose as to whether the Rembau *adat* implies that a daughter by adoption is bound on receiving a gift of land from her adopted mother to maintain the latter's sons on penalty of returning to them the land in the event of non-maintenance. Parr and Mackray, on page 73 of their book, deal with the question of the responsibility of the holder of ancestral property towards the males of the family but it would appear that this responsibility ceases when the male is married, and in this case Seman was married some time ago and Lehar paid the expenses.

4. I was of opinion that there was no express or implied agreement on Lehar's part to return the lands to Seman in any event. In any case I do not think he has in the least proved his case of "non-maintenance." I accordingly dismissed his claim to be declared owner of E. M. R. 118, 120 and 369 Bongek.

**TIMAH v. TAIB.**

*Customary Enquiry 9/26.*

An undivided share in ancestral land cannot ordinarily be sold out of the tribe.

Timah desired to sell an undivided quarter share in ancestral land because it was inconvenient to her to maintain it; she had other ancestral land. The proposed transferee was of a different tribe.

Taib, a male relative who held a share in the land in question, lodged a written objection but did not appear.

The *lebaga* proposed to give his assent.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—"Timah is the owner of a quarter share only in this land, the whole area of which is under two acres. The intending purchaser is a member of a different tribe.

I am of opinion that co-ownership by different tribes of a piece of ancestral land like this should be discouraged. Therefore, I do not agree with the *lebaga*, and order that such transfer should be allowed to a member of the same tribe only."

**Commentary.**

No member of Timah's tribe claimed the option so the order amounted to prohibition of transfer.

The decision appears to have been based on considerations of public policy, *viz.*, the avoidance of sources of friction between tribes, and it was certainly justified on those grounds, but it could equally be supported on grounds of *adat*, *viz.*, conservation of property within the tribe. E.N.T.

**INAH v. ECHIK.**

*Customary Enquiry 11/26.*

Ancestral land cannot be transferred except for the purposes recognised by the custom.

Inah was the owner of a one-third share in two lots of ancestral land; she wished to sell out her share to a member of another tribe, and to remove to Jelebu where she proposed to purchase other land in lieu.

Echik, a sister of Inah, lived on the land and objected to the proposed sale.

The *lembaga* was of opinion that Inah should give up her share to the sister who remained, and was not at liberty to sell it.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—"I quite agree with the *lembaga*. I am a native of this place and know the custom well. Ancestral land should not be sold out simply because the proprietor wishes to remove to another place; moreover the proposed sale is to another tribe; this sort of transfer should be discouraged.

The sale of ancestral land is allowed according to *adat* at any rate for the following reasons:—

1. Proprietor wishes to go to Mecca;
2. Proprietor is bound by misfortune to pay debts—*hutang tumbok*.

The transfer is disallowed."

**SI-ALUS v. INOH.***Customary Enquiry 2/27.*

Ancestral land cannot be sold to pay debts if the holder has acquired property available.

Si-Alus wished to sell out the whole of her ancestral land to pay a debt to a chetty; of two intended purchasers only one was of Si-Alus' tribe. It did not appear that the debt was unavoidable.

[*Note.*—Doubtless “unavoidable” was used in the sense of “recognised by the custom as unavoidable,” *i.e.*, *hutang tumbuh*.]

Si-Alus also had some acquired land and Inoh, her brother, contended that she was at liberty to sell that to pay her debts, but not the ancestral.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—prohibited the proposed sale.

**Commentary.**

This decision accords with the *Bulat* reported at page ; the principle was expressed in Malay by the *lembagas* as *habiskan harta charian dahulu*.



**SAMAT v. SUPAU.***Customary Enquiry 15/27.*

Inherited property cannot be charged except for a purpose sanctioned by the custom.

Samat wished to charge his 1/5 share in one of the lands inherited by him from his parents (*Re Kahar dec.*, p     ) in order to settle a private debt.

Supau, his sister, objected. If the debt was *hutang tumbuh* she was willing to pay it herself but she denied that it was a customary debt at all.

No particulars of the debt were given.

The *lembaga* supported Supau's objection.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—"In my opinion this is not a genuine *hutang tumbuh*. It is not in accordance with the *adat* Rembau—the charge cannot be allowed."

**IJAH v. SA-ELAH.**

*Customary Enquiry 8/26.*

Ancestral land to which there is a direct heiress cannot be sold for pilgrimage without the consent of the heiress.

Deli and his cousin Ijah wanted to sell Ijah's ancestral land to members of another tribe, in order to go to Mecca.

Sa-Elah, the daughter of Ijah, objected to the proposed transfer on the ground that if the land was sold she would lose her inheritance.

Thereupon Ijah withdrew her application.

E. N. TAYLOR, Esq., *Collector, Rembau*:—*prohibited* the transaction.

**TIAHAD v. DERAİ***Customary Enquiry 5/27.*

A holder who sells ancestral land for pilgrimage must retain sufficient for her future maintenance.

Tiahad, having no acquired property, wished to sell the whole of her ancestral land to Piah, a female relative, in order to go to Mecca with her son. She had no daughter.

Deraï, a nearer relative than Piah, objected to the proposed sale on the ground that if the whole were sold Tiahad, on her return, would have no means of support. Deraï did not wish to exercise her option—she contended that Tiahad ought not to dispose of more than half of her holding.

The son contended that sale of half only would not suffice to finance the pilgrimage.

Inche OSMAN bin TA'AT, *Assistant Collector, Rembau*:—"The registered owner has no other lands to live on, when returned from Mecca, if the whole of these lands are sold. I am of opinion that only half can be sold; if the proceeds will not be sufficient she can either abandon her proposal to go to Mecca or obtain assistance from her son."

**Ex-Parte SIAMBONG.***D.O.R. 282/27.*

Ancestral land may be surrendered for religious purposes provided that there are no immediate heirs, and that the other members of the tribe do not object.

Siambong was the holder of seven lots of ancestral land; she had two sons of full age but no daughter and no near female relative; she desired to surrender one small ancestral *kampung* for the purpose of a site for a mosque.

G. M. KIDD, Esq., *D.O., Tampin*:—"I think that due notice should be given under Section 7 iv of the 1926 Enactment of the intention to give up this land for *wakaf*, and if no objection is received the surrender can be accepted. It is true that the woman only holds for her tribe but if the tribe assent to the land becoming *wakaf* the intention of the *adat* is fulfilled."

Notice was published accordingly but no objection was lodged and, the assent of the *lembaga* being recorded in the manner prescribed for other dealings, a surrender was executed and registered and the land thereupon becoming state land was formally declared a Reserve for a mosque.

**MILAH (as Trustee of Sahara) v. MOHAMED  
SHARIFF.**

*Land Case 219/27.*

A house on ancestral land is ancestral property and the proceeds of sale thereof are recoverable by, or on behalf of, the customary heiress of the land.

Ijah died leaving one infant daughter and some ancestral land on which was a house; she left no near relatives but a number of second cousins who quarrelled as to the trusteeship. After some abortive litigation in the Supreme Court the Collector transmitted the land, all of which was ancestral, to Milah, one of the cousins and the *de facto* guardian, as trustee of the infant daughter Sahara.

Mohamed Shariff, *alias* Kering, a male first cousin of deceased, had sold Ijah's house and with the proceeds bought a piece of land at Legong Ulu at a chargee's sale; he attempted to obtain registration of this land in his own name but the Collector refused to accept the documents.

Eventually Milah applied for transmission of the Legong Ulu land. Shariff appeared but raised no defence.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"It is perfectly clear that this land is part of the estate of Ijah deceased and should go to the daughter, like the ten ancestral lots already transmitted."

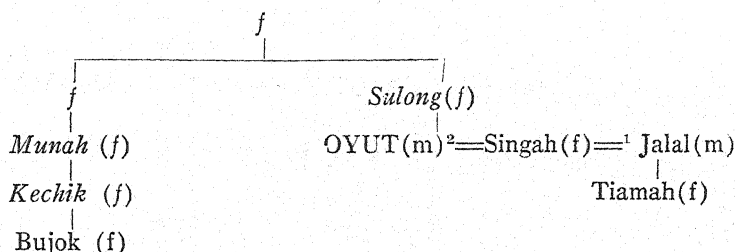
He accordingly registered the Legong Ulu land in the name of Milah as trustee of Sahara and entered the usual caveat.

## BUJOK v. TIAMAH.

*Land Case 35/17.*

A transfer of ancestral land is void unless the assent of the *waris* is shewn to have been given.

Ancestral land held by a man ranks as *harta pembawa* of his marriage.



An ancestral *sawah* passed to Oyut from Sulong. Oyut then married Singah who already had a daughter, Tiamah. Singah paid off a charge of \$100; afterwards Tiamah paid a further \$50 and Oyut transferred the land to her; this transfer did not bear the written consent of the *lembaga*.

W. R. BOYD, Esq., *Collector, Rembau*:—"There was not a full and regular consent of the *waris* and *lembaga* sufficient to bar the claim of Bujok and justify the sale to Tiamah. I therefore order that the land be registered in the name of Bujok who shall repay the \$150 to Tiamah."

Tiamah appealed.

At the hearing of the appeal it was stated in evidence that the land being *pesaka* was *pembawa* of the marriage to Singah and should have returned accordingly to Oyut's *waris*.

The Hon. Mr. A. H. LEMON, *British Resident*, held that since there was no evidence that the claim of Bujok had ever been waived the transfer was one which Oyut had no power to make, and affirmed the decision of the Collector.

## Commentary.

1. This case affords a striking illustration of the force and incidence of the *adat*; the transfer in question was registered before the passing of the Enactment of 1909, so that the written assent of the *lembaga* was not one of the statutory essentials to a valid transfer:

the instrument was attested and registered by the Collector, and if Tiamah had been an entire stranger no doubt the doctrine of sanctity of registration would have applied; the record is silent, but it is suggested that having regard to the relationship of the parties, Tiamah may have been considered to have had constructive notice of Bujok's claim, and that this threw on Tiamah the onus of proving that the proper assent had been given. Under modern conditions, of course, Oyut would have been registered as holder of a life interest only, and Bujok's remainder would have been completely protected.

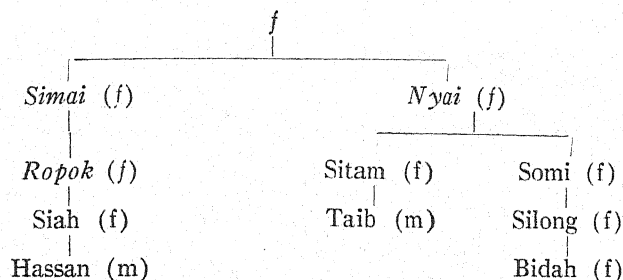
2. This is an instance of what Parr and Mackray call *harta terbawa*, and as the Resident used the word *pembawa*, it is submitted that the latter is the correct term (see also pp. 14, 129). E.N.T.

**REPAH v. SIAH and TAIB.***D.O.R. 337/26.*

A transaction which is contrary to the custom is void and may be set aside even after registration.

A transaction may be void for substantial infraction of the custom, though it is regular in form.

Land cannot be charged to a male member of a tribe if the female members object.



Siah having no daughters desired to sell her ancestral land, in order to go on pilgrimage with her son Hassan. She agreed orally to transfer the land (five lots) to Repah, of the same tribe, for \$915. A date for completion of the transaction was fixed and Siah promised to issue the proper Notice. Afterwards Siah charged four of the lots to Taib for \$1132, with the assent of the *lebaga* but without publication of Notice; the charge was registered.

[*Note.*—The law required assent in every case but publication of Notices was not obligatory. The practice was to require publication if the proposed transaction was in favour of another tribe. A charge to a male was within the Enactment. E.N.T.]

On learning of this transaction Repah complained to the Collector that the charge was contrary to the custom, and an enquiry was held.

An Assistant Collector valued the whole five lots at \$1000 only.

Repah's objection was based on the agreement to sell to her.

Bidah also objected, on the grounds that Siah was going to Mecca, that the chargee would occupy the land according to custom and that since Taib was married into another tribe the land was in substance charged to another tribe. As Siah had no daughter, Bidah was, through Somi, the next heiress and had the first option. She admitted Siah's right to sell for pilgrimage, and since Bidah had not



money to exercise the option she contended that the land should be sold to Repah—the nearest member of the tribe who offered to buy—in preference to charging it to another tribe.

Somi offered to put up the money for the charge to be transferred to Bidah, but she had no money of her own and proposed to use Taib's money. The Collector rejected this proposal, which would have altered the situation on paper only without affecting the substance of the transaction.

The *lembaga* had interviewed Silong, but not Repah, and it was clear that he had given his assent without making any proper enquiries.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The charge is clearly contrary to the custom and must be set aside."

Taib produced the charge, and offered to discharge it; Siah produced \$1132 and paid it over to Taib then and there and the trial Collector attested the memorandum of discharge.

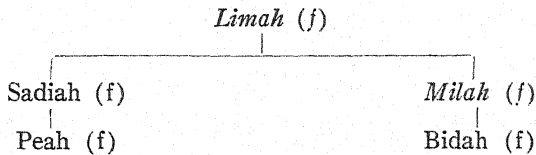
[*Note as to the procedure.*—The remedy for a case like this, where the instrument complained of has actually been registered before any objection is lodged, is for the objector to apply to the Resident for rectification of the Register. Illiterate people usually put in petitions so badly drawn that it is necessary to hold an enquiry in order to discover the points at issue, before the correct remedy can be applied. This, however, is not inconvenient, because the parties usually submit, as here, to the opinion of the Collector, even when a definite order cannot be made. Even if they do not submit the enquiry is not wasted for the record can still be used in the rectification proceedings, E.N.T.]

### Commentary.

An action of this character must be brought without delay. Where a transaction was regular in form and was impeached many years later, the Resident and *Undang*, affirming the trial Collector, refused to entertain a plea that the *lembaga's* assent had been given contrary to custom. (L. C. 167/27 not reported).

**BIDAH v. PEAH.***D.O.R. 295/26.*

A relative other than the direct heiress cannot prevent transfer—she has only an option to purchase.



Sadiah having no natural daughter adopted Peah, who was of the same tribe but a different *perut*; a goat was killed and customary ceremonies performed in the presence of the Dato Perba who was *lembaga* of both parties. Sadiah transferred three lots of ancestral land to Peah. Some years later Peah desired to sell one of these lots to Siti, a distant relative of Sadiah.

Bidah objected to the proposed transfer.

E. N. TAYLOR, Esq., *Collector, Rembau*:—" Bidah has a prior right as against Siti to buy E. 761 for \$45; I prohibit any transfer of this land to a person other than Bidah.

Bidah has no right to object to a sale absolutely on the ground she alleges, *viz.*, that alienation would prejudice her customary expectation of *pesaka*."

\* \* \* \* \*

Later, Bidah definitely refused to exercise her option, and the transfer to Siti was approved and executed.

**SINOI v. DINAH.***Customary Enquiry 10/27.*

*Tanah tebus*—if ancestral land is transferred for material consideration, even to the niece of the holder, then, subject to customary options, the purchaser is as free to re-sell it for the purpose of pilgrimage as to sell new *charian* land.

The parties were sisters; Sinoi had no daughters. Haji Tiram, their aunt, when about to go to Mecca had sold an ancestral *sawah* to each of them. Sinoi now wished to sell hers to an unrelated member of the same tribe for \$900 in order to settle debts incurred on her own pilgrimage. The *lembaga* assented to this sale, but Dinah objected on the grounds:—

- (a) that Sinoi had other and new land which ought to be sold in preference to this tribal land;
- (b) that the transfer was designed to defeat the inheritance of Dinah's daughters.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—held that by virtue of the purchase from Haji Tiram the land had become *charian laki-bini* of Sinoi and her husband and that the assent of the *lembaga* was not given contrary to the custom.

Dinah appealed.

The Collector (*Taylor*) considered that there was not sufficient evidence as to the issue of custom raised by ground (a) and directed a further enquiry before submitting the Record to the Resident.

Further evidence was taken accordingly in the presence of the parties; it was shewn that the \$900 had actually been paid. The *lembaga* of the tribe said that near relatives exercising their option are entitled to obtain such land a little cheaper than strangers—he thought that Dinah ought to pay \$800 if she wanted the land. Dinah, however, would not pay more than \$200.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The *adat* appears from the evidence of the three *lembagas* to be that *tanah tebus* and *tanah charian bahru* are equally available to be sold for the purpose of pilgrimage; there is no priority between them. The only difference is that *tanah tebus* is subject to Customary options and *tanah charian bahru* is not so subject.

In this case the proper notice was issued and the appellant, Dinah, was in fact present at the original enquiry and therefore had every opportunity to exercise her option. She did not do so and she affirmed again at this supplemental enquiry that she was not willing to exercise it. I am therefore of opinion that no cause for variation of the original order has been shewn."

*Ordered* that the supplementary enquiry be reported to the Resident, as part of the Record.

Dinah however withdrew her appeal.

**KECHIK v. SAMSI AH.***Customary Enquiry 12/26.*

The nearest relatives have an option to purchase ancestral land with priority in order of nearness.

Kechik wished to sell her ancestral land to Pisah in order to go to Mecca; Samsiah objected. They were all of the same tribe; the exact relationship was not proved but it appeared that Samsiah was the nearer relative.

Inche OSMAN bin TAAT, *Assistant Collector, Rembau*:—"The nearest relative of the same tribe has the prior right to take up the land; consequently the proposed transfer to Pisah cannot be approved but transfer to Samsiah, the nearer relative, is allowed."

**IJAH v. INDAM.***Land Case 32/20.*

Members of the vendor's *perut* have a customary opinion to purchase ancestral land, with priority over the other *perut* in the tribe.

One Isah agreed in writing to sell her ancestral land to Ijah of the same tribe but of a different *perut* for \$600/- and received \$100/- earnest money. The *lembaga* refused his assent on the ground that Indam, who was of the same *perut* as Isah, was willing to buy the land at the same price. Ijah applied to the Collector (under Section 4 of the Enactment of 1909) to declare that the *lembaga's* assent was wrongly withheld and to dispense with it accordingly.

The *lembaga* maintained that a member of the same *perut* has a customary option, prior to that of other *perut*.

Ijah contended that only near relatives have that priority, and that once outside the immediate family all members of the tribe have an equal right.

G. A. de C. de MOUBRAY, Esq., *Collector, Rembau*:—"I am satisfied that the *adat* as described by the *lembaga* is correct, the custom being that if a member of the same *perut* claims the right of purchase preferentially to a member of another *perut* and offers the same, or nearly the same, price the right must be conceded and given effect to.

I therefore order that subject to the withdrawal of the caveat and the payment of \$100 by Haji Isah to Ijah within 21 days Haji Isah may sell the land for \$600 to Indam.

This land being *sawah*, and it being an urgent matter that cultivation should be begun, I rule that Haji Isah may and should allow Indam access to the land as soon as she has paid the \$100 to Isah.

*N.B.*—I have instructed Datoh Mendelika Pajar to arbitrate on the amount of compensation due for the alleged *changkoling* (i.e., digging) of the *sawah* by Isah."

**TIAWA v. BOLOK.**

*Customary Enquiry 1/19.*

Members of the same tribe, even males, are entitled to the customary option to purchase ancestral land.

Tiawa wished to sell part of her ancestral *kampung* to pay a debt incurred by her brother being fined; the intended purchaser was a woman of another tribe.

Bolak, a male member of Tiawa's tribe objected; he offered to buy at the same price.

W. R. BOYD, Esq., *Collector, Rembau*:—upheld the objection.

**SIHI v. BAIYAH and SIPAU.***Land Case 37/19.*

Where the tribe have an option to purchase land they must pay the price offered by a member of any other tribe, if not more than the value of the land.

Land continues to be held subject to the option after transfer within the tribe.

Sihi was a woman of the Seri Melenggang tribe and the holder of E. 181 Pedas which she had held since the earliest titles were issued in 1888 and which she maintained had been inherited by her from her mother. The title was inscribed "Customary Land." Sihi and her husband cultivated the land to a very slight extent only.

In 1913, Sihi, having no daughters, transferred the land to her two sisters, Baiyah and Sipau, for natural love and affection; the land was valued for stamp duty at \$60. Baiyah and Sipau and their husbands cultivated the land till 1919 when they proposed to sell it for \$300 to one Timah, of the Paya Kumboh tribe, in order to go to Mecca.

Sihi lodged an objection, and contended that the valuation was excessive and that the vendors did not *bona fide* intend to go to Mecca; she offered to buy the land for \$200.

The vendors contended that the land was originally alienated to Sihi and her husband, and that they had bought it for \$60 cash.

G. A. de C. de MOUBRAY, Esq., *Collector, Rembau*:—"I hold that the land is *charian laki-bini*—that it was given to Baiyah and Sipau by Sihi—that the land was developed by these two and their husbands.

*Order*—that the rubric "Customary Land" be cancelled."

[*Note*.—It is not clear whether the Collector meant that the land was *charian laki-bini* of Sihi in the first place, or that by reason of their cultivation it had become *charian laki-bini* of Baiyah and Sipau and their husbands. It is submitted that the order could only be defended on the former view, and that in any case the order for cancellation was *ultra vires* the Collector, E.N.T.]

Sihi appealed.

The land was independently valued at \$500.

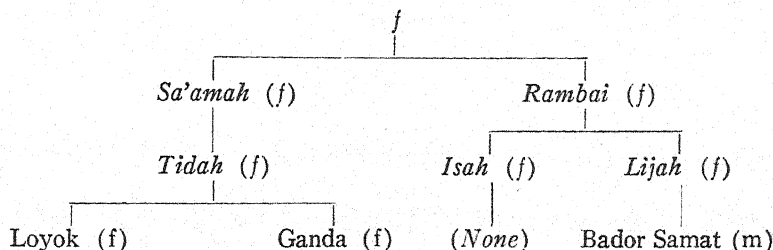
The Hon. Mr. W. J. P. HUME, *British Resident*:—"Ordered that Sihi, the appellant, be given the option of buying the land for \$300, and that failing deposit by Sihi, within a month, of the full amount with the Collector the respondents, Baiyah and Sipau, be at liberty to sell it to Timah of the Paya Kumboh tribe."

The money was duly deposited by Sihi and the land was transferred back to her.

The words "Customary Land" were never cancelled.

**BADOR SAMAT v. LOYOK and GANDA.***D.O.R. 116/28.*

The *waris* are entitled to an option at a price not exceeding a fair and reasonable valuation of the land.



Lijah died before Isah, and on the death of Isah in 1924 Bador Samat inherited a piece of her land. In 1928 Bador Samat desired to sell this land and offered it to Loyok and Ganda but they were unable to agree as to price. Bador Samat then executed a transfer to one Jamaludin, of his own tribe but married into another tribe, for \$850. This transfer was rejected because the proper notice and assent had not been given. Bador Samat then issued a notice of intention to sell the land for \$850.

Loyok and Ganda lodged an objection. They claimed priority and alleged that the price was excessive and offered to buy the land for \$400.

It was alleged that Jamaludin had actually paid \$850 cash to Bador under an oral agreement that the money should be refunded if the transfer was not registered.

The *lembaga* inspected the land and valued it at \$650.

E. N. TAYLOR, Esq., *Collector, Rembau*.—"The evidence shows that Bador and Jamaludin recognised from the start that Loyok and Ganda had in fact a right to an option over the land. I am of opinion that Loyok and her sisters have a prior right to buy the land for \$650/- and subject to them depositing that amount in this office within 30 days I prohibit transfer to any one else. In default of such deposit a fresh transfer to Jamaludin's wife may be executed and registered.

If the option is exercised Bador will have to refund to Jamaludin in accordance with the agreement alleged by Jamaludin."

Loyok and Ganda appealed.



The Hon. Mr. J. W. SIMMONS, *British Resident* and the Hon. Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—  
“The appellants base their appeal on 2 grounds:—

- (i) that Bador Samat not having disclosed any good ground for selling, the sale should not be allowed at all;
- (ii) that the option was granted at too high a price.

As to ground (i) we do not consider it proved that it is necessary for Bador Samat to disclose any reason for selling.

As to (ii) the respondent agrees that it was his duty in the first place to offer the land to his *waris* before selling it elsewhere. He did so, but states that the proper price was \$850/-. The matter is therefore reduced to one of the value of the land. On this we examined the *lembaga* who had visited, and see no reason to refuse to accept his valuation.

The appeal is therefore rejected and the order of the Collector stands, the 30 days mentioned therein to run from to-day. Failing purchase by Loyok and Ganda the land may be sold elsewhere.”

Loyok and Ganda did not, however, exercise their option and a month later the land was transferred to Jamaludin's wife.

[As to this see page 34.]

### Commentary.

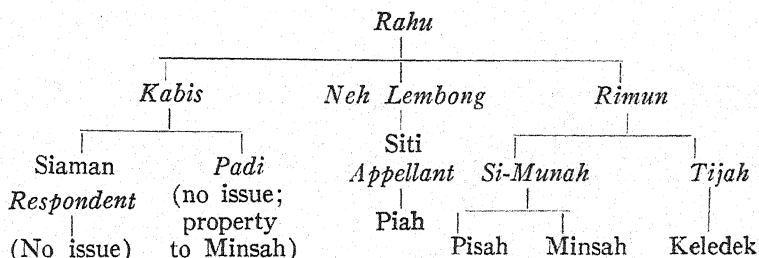
At the trial Loyok and Ganda only claimed their options but on appeal they raised the further point that ancestral land cannot be sold except for a “customary” purpose. The judgment on this point cannot be considered satisfactory, for it appears to treat the issue as an issue of fact whereas it is an issue of law. This question is discussed in the treatise at page.

The case is, however, a clear authority for the proposition stated in the headnote. E.N.T.

**SITI v. SIAMAN.***Land Case 49/1911.*

Ancestral land cannot be transferred *inter vivos* so as to disturb the even distribution over all the *stirpes* in the family.

The parties were related as follows, all of them being women:—



Siaman transferred all her share of the ancestral land to Keledok for love and affection. Siti appealed to the Collector, under Sec: 4 of the Customary Tenure Enactment 1909, on the ground that the consent of the *lembaga* was given contrary to the custom.

The Collector called an independent *lembaga* who stated:—

“It is wrong according to *adat* to give all of Kabis’ share to Rimun. If Kabis and Neh Lembong and Rimun had all had no issue Kabis could not have given her whole share to Rimun. It would have to have been divided equally. Rimun’s issue have already received their whole share by Si-Munah getting Padi’s land hence Neh Lembong’s issue, Siti, should get the other 1/6 share of Rahu’s property so that Neh Lembong and Rimun’s offspring should enjoy equal shares of the ancestral property. Siaman says that Keledok has looked after her all the time and that she has not been assisted in any way by Siti. It is clear that the *adat* would give the land to Siti, if Siaman transfers it at all. There is nothing to prevent Siaman keeping her whole share till she dies.”

The *lembaga* of the tribe concerned stated:—

“My consent to the transfer to Keledok was obtained owing to Siaman concealing the facts of the case, and Siti’s right to the land. Keledok states that as far as she is concerned she would not protest against the transfer to Siti, Siaman merely making her a present of the land for reasons of affection.”

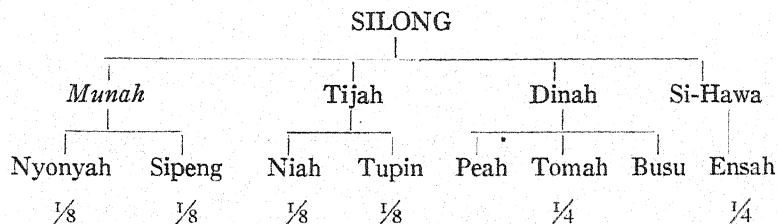
H. E. PENNINGTON, Esq., *Collector, Rembau*:—*Ordered* the transfer to be annulled, and informed Siaman that if she wished to keep the land in her own name she could do so, but if not, she must transfer it to Siti in accordance with the custom. He also ordered Siaman to pay the costs of the proceedings.

*Note*.—Keleddek was ordered to deliver up the title for rectification. If such a transfer had merely been presented it could simply have been rejected by the registering authority, but if actually registered the proper course would be to apply for rectification. E.N.T.

**Re SILONG dec.***Land Case 241/24.*

Ancestral land devolves on descendants in equal shares *per stirpes*, not *per capita*.

The family was as follows, all being women:—

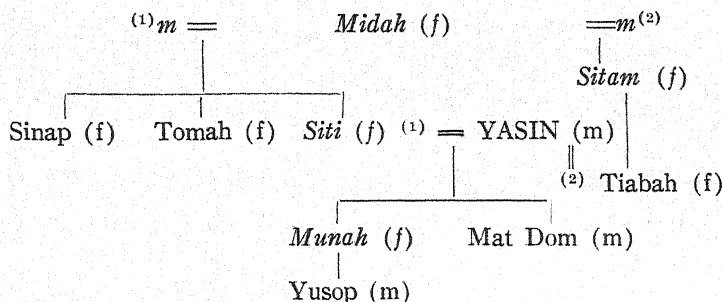


Tijah, Dinah and Si Hawa waived their claims in favour of their respective daughters; Peah and Busu did not claim because they already had land elsewhere.

E. E. PENGILLEY, Esq., *Collector Rembau*:—transmitted the land in the proportions indicated by the figures under the names in the table.

**Re YASIN dec.***Land Case 50/26.*

Ancestral land must be distributed equally *per stirpes*—a sister is not “nearer” than a niece.



The land was registered in the name of Yasin but it was really ancestral land descending from Midah to Siti; there was one share in the name of Munah, also deceased.

Tiabah claimed to share equally with Sinap and Tomah but they resisted her claim, alleging that they, as sisters to Siti, were “nearer” than Tiabah, her niece.

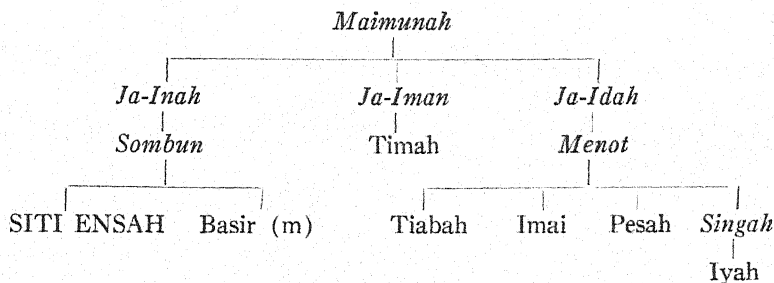
It was agreed that Mat Dom was entitled to a life interest.

E. N. TAYLOR, Esq., *Collector, Rembau* (after consulting G. A. de C. de MOUBRAY, Esq., *D.O. Tampin*):—“Nearness” is irrelevant—the rule is *per stirpes* in equal shares. Hence Sinap, Tomah, and Tiabah succeed equally.”

**Re SITI ENSAH dec.***Land Case 147/27.*

Devolution of ancestral property—all persons having the same common ancestress are equally “near.”

The facts sufficiently appear from the table, and the judgment of the Collector.



E. N. TAYLOR, Esq., *Collector, Rembau*:—"There is no primo-geniture in the *adat*. All the daughters succeed equally to their mother; they are not necessarily arranged in the tables in order of age.

2. Siti Ensah having died childless, Timah claims all her property and Imai claims half. Timah says that she is nearer than Imai.

3. Parr and Mackray, at p. 69, say that the property reverts to the "nearest living relatives *per stirpes*." The question is therefore—"What is meant in *adat* by nearness?"

4. In my opinion the true test of nearness is not applied by considering the competing candidates as compared with each other but by considering their respective positions as compared with the deceased. Thus the nearest common ancestress of Timah and deceased is Maimunah; the nearest common ancestress of Imai and deceased is Maimunah; therefore Timah and Imai are equally related to deceased and equally entitled to succeed.

5. The very nomenclature shews that to determine the degree of relationship the *adat* looks back to the common ancestress.

6. Timah claims because she has daughters. Menot was related to deceased in exactly the same way as Timah. Why should Menot's daughters be penalised because Menot happened to die first? According to Parr and Mackray, at the bottom of page 68, the share of a pre-deceased daughter does pass to the grand-daughter and the appeal case *Imat v. Relip* (p. 208) proves that this view is correct. On this principle Timah ought to share equally with Imai.

7. Tiabah and Pesah are related in exactly the same way as Imai and (as Imai admits) it follows from my reasoning that Iyah is entitled to share equally with them.

8. I therefore transmit half the property to Timah and the other half to Imai, Tiabah, Pesah and Iyah in equal shares, but all subject to the statutory life interest of the one brother of the deceased."

Timah appealed on the ground that she was nearer in relationship to the deceased than any one else.

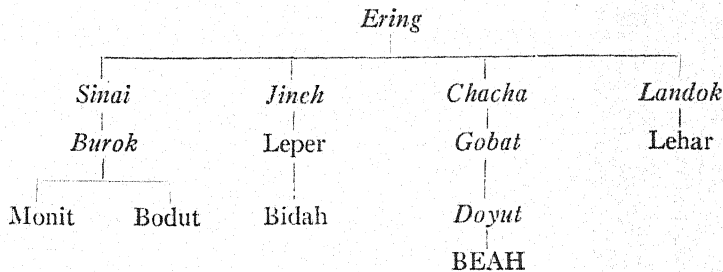
The Hon. Mr. E. C. H. WOLFF, *British Resident*, and Inche ABDULLAH bin HAJI DAHAN *Undang of Rembau*:—"We consider that in this case it is necessary to look back to a common ancestress, who is Maimunah. She left three daughters, Ja-Inah, Ja-Iman and Ja-Idah. The deceased was the sole female heir in the Ja-Inah *perut*, so that subject to Basir's life interest the property passes to the other two *perut* in equal shares. This gives Timah a half share of the whole and she can claim no more, as Ja-Idah's rights were not extinguished on her death but passed to her descendants.

Appeal dismissed."

**Re BEAH dec.***Land Case 403/24.*

Devolution of ancestral property—the share of an extinguished *perut* reverts to the collateral relatives and is distributed *per stirpes*.

The Collector found that the family, omitting males and others not concerned, was:—

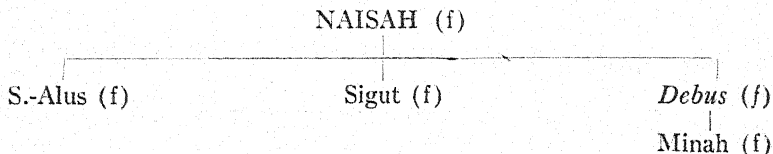


E. E. PENGILLEY, Esq., *Collector, Rembau*:—...“ the property should be divided into three parts, one to Sinai's line, one to Jineh's and one to Landok's. Sinai is represented by Monit and Bodut, Jineh by Bidah and Landok by Lehar. I therefore order that the property of Beah be transmitted to Monit (1/6) Bodut (1/6). Bidah (1/3) and Lehar (1/3).”



**Re NAISAH Dec.***Land Case 4/18.*

Transmission of ancestral property is subject to any partial distribution already effected, so that the final result is to divide the total ancestral holding of the family equally *per stirpes*.



Debus died before Naisah.

W. R. BOYD, Esq., *Collector, Rembau*:—transmitted the land to Si-Alus, Sigut and Minah, in equal, shares.

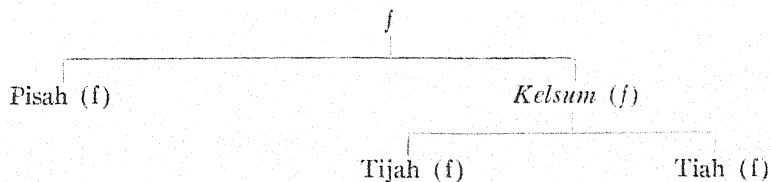
Si-Alus and Sigut appealed.

At the hearing of the appeal it was proved that Naisah had divided her land between her three daughters but only Debus, the eldest, had been registered. (The parties had omitted all mention of this at the trial).

The Hon. Mr. A. H. LEMON, *British Resident*:—allowed the appeal and ordered the land registered in the name of Naisah at her death to be divided between Si-Alus and Sigut.

**Re PISAH binti KELEDI dec.***Land Case 14/26.*

Transmission of ancestral property must be so ordered as to secure ultimate equal distribution *per stirpes* of all the property in the family.

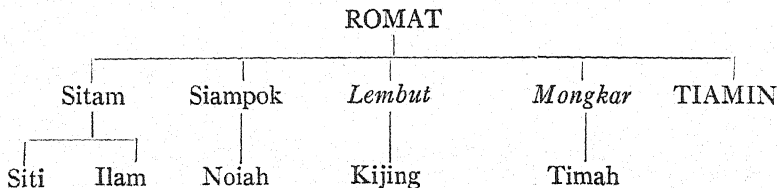


The *lembaga* deposed:—"Tiah was an infant so her share was not registered but she should really have had an equal share with Tijah in Kelsum's half; she should now have all Pisah's half as the two sisters must ultimately share equally."

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the land to Tiah accordingly.

**Re ROMAT and TIAMIN (both dec.)***Land Case 262/24.*

Ancestral *kampung* and *sawah* are to be distributed so that every *perut* has a fair share of each.



All these were women.

Romat and Tiamin died each leaving one lot of ancestral land; Timah had lived in one house with Tiamin and Romat and cared for them in their old age and sickness; she claimed these two lots for herself.

Siti, Kijing and Noiah claimed to share equally with Timah, as being equally related to the two deceased in question.

It was shown that Romat had distributed the ancestral land between her daughters but not until after the death of Mongkar: it was said that Tiamin, having no daughter of her own, had "adopted" Timah and her two brothers, but apparently this only meant that she had cherished them.

There were in any event four *perut*.

E. E. PENGILLEY, Esq., *Collector, Rembau*:—"I am of opinion that if the land is divided up into four shares between the four rival claimants, Siti, Noiah, Kijing and Timah, the position of the last named with regard to her cousins will be distinctly inferior, apparently for the inadequate reason that her mother, Mongkar, had died before the division of Romat's property. It is now said that the other sister, Sitam, got her land from Siti, a cousin of Romat—Siampok hers from Ilan, another cousin—and Tiamin hers from Siampok, her sister, by gift. It is, however, clear that all the daughters of Romat are related in exactly the same way to Sitam, Ilan and Limah. I can therefore see no reason whatever why Timah should be put off with a quarter share in two titles which she has admittedly been looking after, while her cousins will inherit from their respective mothers at least two titles, one *kampung* and one *sawah* each.

I therefore order that the lot registered in the name of Romat, and that in the name of Tiamin be transmitted to Timah."

*Journal Malayan Branch* [Vol. VII,

**Commentary.**

There is no note in the Record as to who gave evidence of the oblique inheritance from Siti and Limah.

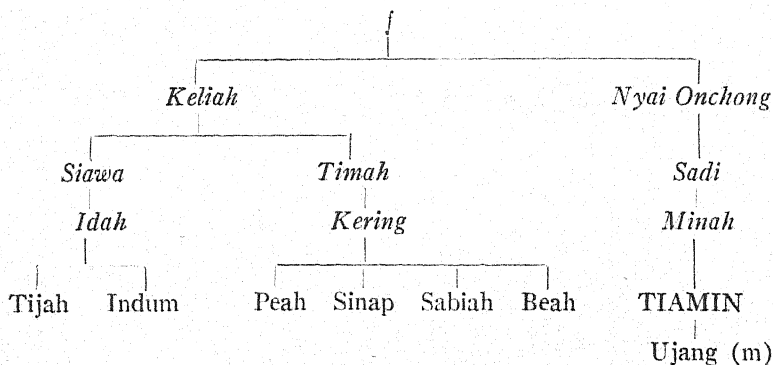
Romat's lot was a *kampung*, and no doubt it contained the house and was her *kepan*; the case therefore illustrates the remark of Parr and Mackray (at p. 68) that the youngest daughter is normally the one to stay at home and ultimately to inherit her mother's house.

It is most extraordinary that no evidence whatever was offered as to who paid the funeral expenses. E.N.T.

**Re TIAMIN dec.***Land Case 45/28.*

Where there are several remainder-women to a life-interest it is expedient to register one or two of them only, but each *perut* should be represented.

The family was as follows, all except Ujang being women:—



All the living members of the family appeared and claimed distribution of the ancestral land of Tiamin.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"Transmit the land to Tijah and Peah as joint trustees, with survivorship, for their own issue and the other issue of Keliah and subject to the life interest of Ujang."

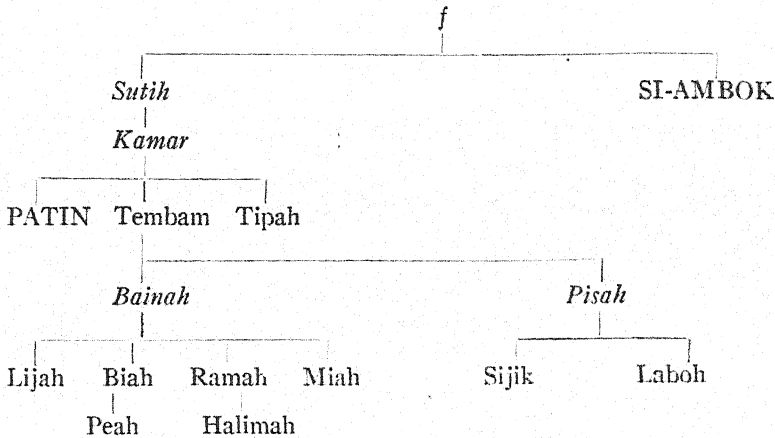
**Commentary.**

Ujang was a comparatively young man and in the ordinary expectation of life the circumstances of the family would materially alter before the property passed to the female relatives; another *perut* might easily be extinguished. To distribute the property in such a case is not only to complicate the registers unnecessarily, but is also likely to lead to further and useless litigation. Where the property is extensive, of course, the male relative, especially if married, cannot actually occupy any appreciable portion, and the family have to come to an arrangement with him. Such arrangements are commonly all the better for not being registered. E.N.T.

# Re SI-AMBOK dec. and Re PATIN dec.

(Land Cases 101 and 102 of 1927 consolidated)

The Collector has a discretion to postpone or delegate the task of distribution.



All these were women.

Tembam was very old and held one lot only—her *kepan*. Tipah held some of the family land but had no daughters; she had already given some land to Biah but none of the others of that generation had yet been registered.

It was never suggested that any of the women mentioned were not entitled to share.

A large number of lots was involved—some *kampung* and some *sawah*—the claimants purported to have arranged a division but the terms of it were not clear.

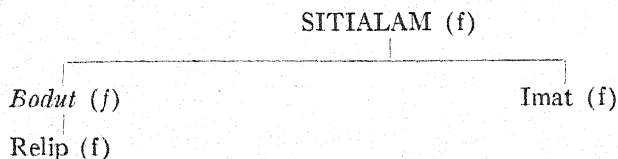
E. N. TAYLOR, Esq., *Collector, Rembau*:—"A partial division has already been made—the best thing is to transmit the whole to Tipah, who seems sufficiently competent to arrange a proper distribution . . . it is all ancestral . . . Tipah accepts, and no one objects."

(He accordingly transmitted all the lots concerned to Tipah.)

*Note*.—This "decision" was merely a device of the Collector to avoid the necessity of registering a large number of titles in six names. An equitable distribution of a dozen *sawah* and *kampung* lots among six women, could not possibly be effected in the office.

**IMAT v. RELIP.***Application 50 of 1914.*

The share of a deceased heiress passes intact to her female issue.



Bodut died before Sitialam. On the death of Sitialam, Imat claimed the whole of her ancestral land.

W. R. BOYD, Esq., *Collector, Rembau*:—*Ordered* the land to be divided equally between Imat and Relip.

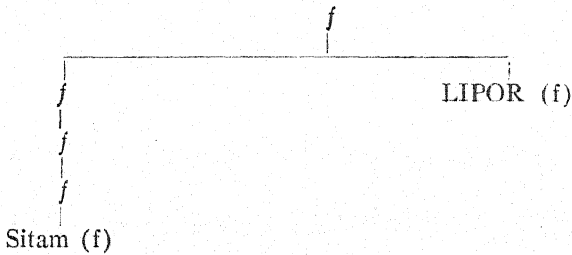
Imat appealed and on the appeal introduced new matter alleging a charge and other transactions. The *lebaga* of the parties and another *lebaga* averred that the land should be divided and

The Hon'ble Mr. J. R. O. ALDWORTH, *British Resident*:—Confirmed the order of the Collector.

Re LIPOR dec.

*Land Case 195/23.*

A woman can inherit ancestral land from her great-grand-aunt.



Sitam applied for transmission of Lipor's land. There was no opposition.

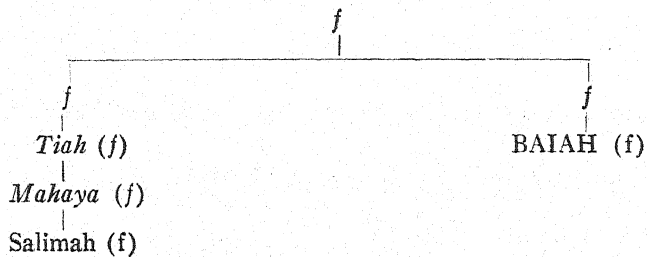
E. T. JAMES, Esq., *Collector, Rembau*:—transmitted the land to Sitam as prayed.

*Note.*—This case is merely one example. The principle has been applied many times. In Land Case 321/23 the facts were identical and the decision the same.



**Re BIAIAH dec.***Land Case 77/17.*

A woman can inherit ancestral land from a first cousin several times removed.



Baiah had no daughters.

W. R. BOYD, Esq., *Collector, Rembau*:—transmitted Baiah's land to Salimah.

(See *Re Lipor dec.* at page 209, and note hereto).

**Re PESAH dec.**

*Land Case 11/21.*

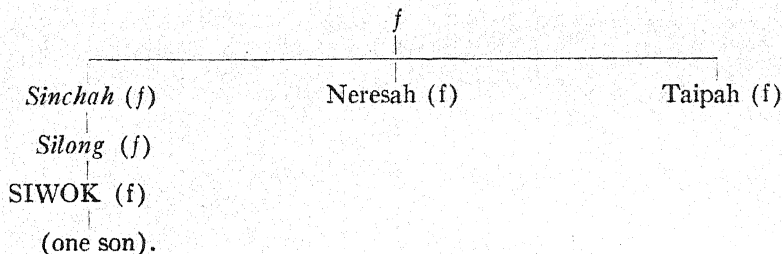
Both ancestral and acquired property revert to the mother of the holder if the latter dies childless.

Pesah died leaving two lots of ancestral land and one of *charian*; the record is silent as to whether she was survived by a husband.

Che AHMAD MANSUR, *Assistant Collector, Rembau*:—  
*transmitted* the property to the mother of Pesah.

**Re SIWOK dec.***Land Case 148/25.*

If the holder leaves no female issue ancestral property may revert to a great aunt.

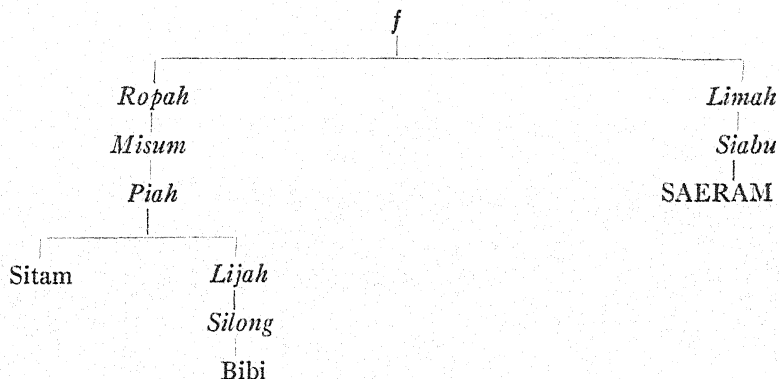


Taipah, having no daughter, made no claim and

J. S. W. REID, Esq., *Collector, Rembau*:—transmitted all Siwok's land to Neresah.

**Re SAERAM dec.***Land Case 355/24.*

The great-grand-daughter of a second-cousin is entitled to a share in ancestral property.



All these were women.

Sitam agreed that her great-niece, Bibi, was entitled to a half-share in Saeram's ancestral property as Bibi's grandmother was related to the deceased in exactly the same way as Sitam herself.

One Haji Pia claimed to share equally with Sitam and Bibi, and gave different tables of descent.

E. E. PENGILLEY, Esq., *Collector, Rembau*:—(after dealing with the evidence). "On the whole I agree with Sitam in her genealogical table, and order transmission to Sitam and Bibi."

## A BULAT.

16TH OCTOBER, 1927.

All the *lembagas* having assembled at the *Balai Undang*, under the presidency of the Hon. Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau* and in the presence of G. M. KIDD, ESQ., *District Officer, Tampin* and E. N. TAYLOR, ESQ., *Assistant District Officer, Rembau*, and certain questions of the sale and devolution of ancestral property having been debated at length,

## IT WAS RESOLVED

1. *as to the sale of ancestral land for the purpose of pilgrimage,*

- (a) that where ancestral property has already been properly divided among all those entitled a woman who has no daughters may sell her share. She need not obtain the consent of the *waris yang kadim* but is, of course, bound to give them the customary notice and options;
- (b) that a woman who has daughters cannot sell any of the ancestral land without their consent;
- (c) that in every case the seller is bound to reserve by way of *kepan* sufficient land to provide for her own maintenance and funeral in case she survives the pilgrimage;
- (d) that acquired property must be exhausted before resort is had to the ancestral (*habiskan harta charian dahulu*);
- (e) that no more property may be sold than is reasonably sufficient to finance the pilgrimage;
- (f) that whereas fraudulent sales have been made by persons not *bona fide* intending to go to Mecca, it is expedient that vendors be required to deposit in the Land Office the whole, or such portion as the Collector may determine, of the proceeds of any such sale and that such deposit be withdrawn only on production of pilgrimage passport and a passage ticket to Mecca;

2. *as to the succession to ancestral property,*

- (a) that in the absence of direct descendents there are four degrees of collateral relations ordinarily entitled to succeed, namely:—

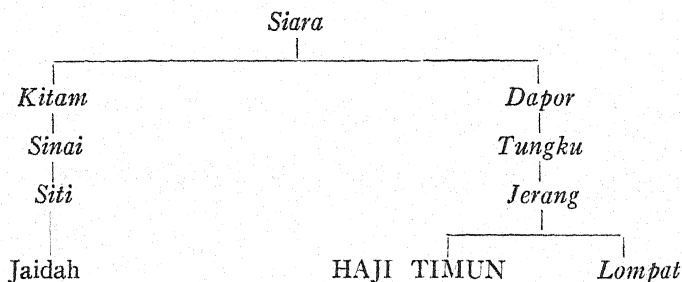
<i>adek-beradek</i>	or sisters,
<i>sanak ibu</i>	or first cousins,
<i>sanak datoh</i>	or second cousins,
<i>sanak moyang</i>	or third cousins;

- (b) that *sanak-nenek*, or fourth cousins, are entitled to succeed in default of *sanak moyang* but it is for them to come forward and prove affirmatively that they are of that degree, and failing such proof it will be held that there are no heirs.

[The *Undang* confirmed these minutes but reserved his own opinion. D.O.R. 600/27.]

**Re HAJI TIMUN dec.***Land Case 27/15.*

*Sanak moyang* are not too remotely related to inherit ancestral land.



All these, except the deceased, were women.

After the death of Lompat, her brother Haji Timun inherited the ancestral land descending through Jerang. On Haji Timun's death the Collector held that Jaidah, who was only *senak moyang* to the deceased, was too remotely related to succeed. He accordingly ordered the land to be sold as *pesaka gantong*, the proceeds to be used to pay the debts of the deceased.

Jaidah appealed, but her appeal was dismissed.

The case being an isolated one, the original papers were examined before including it in this collection.

The Hon. Mr. E. C. H. WOLFF, *British Resident*:—"I am of opinion that the principle on which the judgment in this case was based is not one which can be followed in future cases. It has been definitely repudiated at a *Bulat* held at Rembau on 16th Oct. 1927, which establishes what the *adat* on such a point was at that date." [N. S. 2172/15.]

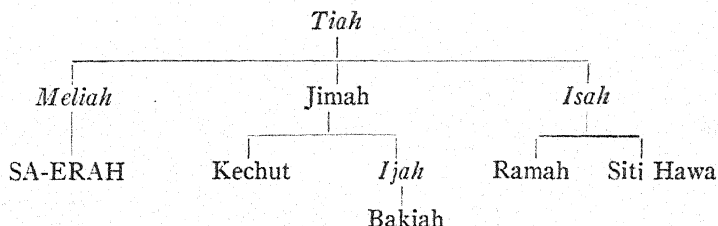
[*Note*.—The *Bulat* is reported at page 214.]

## Re SA-ERAH dec.

*Land Case 97/27.*

The rule of equal division *per stirpes* does not operate with mathematical exactness but may be varied so as to secure to each member of the family a reasonable share of the ancestral *kampung*.

The family, males excluded, was:—



Sa-Erah left one *sawah*, a one-third share in another *sawah* (the other two-thirds belonging to Kechut and Bakiah) and a *kampung* in the title to which Sa-Erah, Kechut, and Ijah were registered as joint guardians of Bakiah.

Sa-Erah had no issue.

Jimah had paid all the funeral expenses of Sa-Erah.

Bakiah was of full age.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"Bakiah's land should now be registered in her own name.

As Jimah's daughters own two-thirds of E. 1215 it is obviously more convenient to give Saerah's third to Jimah than to split, and I award this share to Jimah in consideration of the funeral expenses, the other to be divided equally between the two *perut*."

He accordingly transmitted:—

- (a) the whole of the *kampung* to Bakiah;
- (b) the one-third share in a *sawah* to Jimah;
- (c) the other *sawah* to
 

Jimah,	$\frac{1}{2}$
Ramah,	$\frac{1}{4}$
Siti Hawa	$\frac{1}{4}$

Jimah appealed against the award of the other half of the *sawah* (c) to the descendents of Isah on the ground that she, Jimah, had maintained the deceased Sa-Erah in addition to paying the funeral expenses.

The Hon. E. C. H. WOLFF, *British Resident* and Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—"The 1929] *Royal Asiatic Society*.



*lembaga* reaffirms his opinion at the original trial, that the decision is in accordance with the custom. We concur in this view and dismiss the appeal."

It appeared, however, that the registration of the *kampung* lot was erroneous and they referred the case back to the Collector for further enquiry as to that one lot.

The further evidence shewed that Kechut and Sa-Erah really held one-third of the *kampung* each in their own right; Sa-Erah and Kechut had lived together in the only house on that land for many years and Kechut claimed that Sa-Erah, having no daughters, had settled this *kampung* on her, Kechut, *anak tarek di-beri-kan harta*. Sa-Erah had originally inherited the whole of that lot from Meliah.

Bakiah, having another *kampung* waived her one-third share but Ramah and Siti-Hawa still claimed shares though they also had an ancestral *kampung* each.

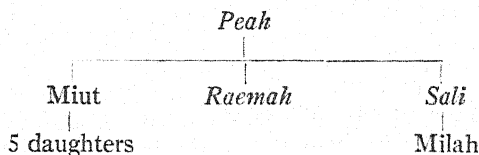
E. N. TAYLOR, Esq.:—"It seems to me that Kechut has made out the best claim. I think that her claim to succeed by virtue of *tarek*, which is practically the same as adoption, is good. There are precedents for such claims.

In addition it appears to me that on a fair division of all the ancestral *kampung* land in the family, Kechut can reasonably hold the whole of the lot now in question (area  $1\frac{1}{2}$  roods) and since Bakiah agrees I think the best thing is to transmit the whole to Kechut."

The Hon. Mr. E. C. H. WOLFF and Inche ABDULLAH bin HAJI DAHAN afterwards called on Ramah and Siti-Hawa to shew cause why this *kampung* should not be registered accordingly in the name of Kechut alone, and no cause being shewn they confirmed the judgment of the Collector.

**Re MIUT dec.***Land Case 3/17.*

The holder of ancestral property has power to appropriate a portion as her *kepan*; such portion is inherited by the relative who pays the funeral expenses in addition to that relative's ordinary share.



All these were women.

The five daughters of Miut claimed to succeed to all the land registered in Miut's name.

Milah objected.

It was shown that Raemah died first, then Sali, then Peah and last Miut.

W. R. BOYD, Esq., *Collector, Rembau*:—"It is quite clear to me that the land is *pesaka* descending from Peah and that Miut's name came on to the register (as sole owner) in error, because her two sisters predeceased their mother. The land should therefore go equally to the three *stirpes* represented by the three daughters of Peah. One daughter, Raemah, left no female issue so her share reverts to the other two *stirpes*. I therefore order that one undivided half share be registered in the name of Milah and the other half share in the names of the five daughters of Miut."

The daughters of Miut appealed, and were allowed to call other and further evidence from which it appeared that before her death Peah had divided the ancestral property, giving a share each to Miut and Sali (Raemah having then died) and retaining a portion as her own *kepan*. This arrangement had never been registered; it took place long before the mukim register was established.

At the time of Peah's death. Sali had already died and Milah, then an infant of five years, did not contribute to the funeral expenses which were all paid by Miut and amounted to the value of the *kepan* land.

The Hon. Mr. A. H. LEMON, *British Resident*:—varied the order, transmitting the *kepan* lots to the daughters of Miut only, and dividing the balance of the ancestral property equally between the two *stirpes* in conformity with the judgment of the Collector.

*Note*.—No evidence whatever of the *kepan* was given before the Collector.

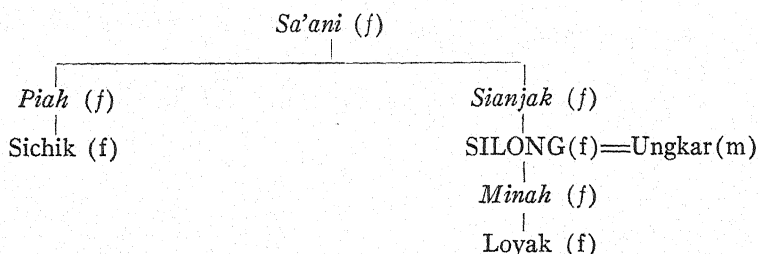
**(Re SILONG dec.) UNGKAR v. SICHIK.**

*Land Case 99/20. D.O.R. 546/23. J.C.C.S. 404/23 and 30/24.*

On the death of the wife the *waris*, not the widower, is entitled to custody of the child.

The widower can recover no compensation in respect of a house built by him on the wife's ancestral land.

The principles governing liability for funeral expenses illustrated and explained.



Silong was the proprietress of ancestral land at Chembong; her husband Ungkar built a house for her on that land. Silong died and Ungkar paid the funeral expenses. He had also paid the funeral expenses of Sa'ani, \$70, and of Sianjak and Minah. There was a dispute between Ungkar and Sichik as to the custody of the child Loyak.

Evidence of the custom was given by several *lembagas* and elders.

W. D. BARRON, Esq., *Collector, Rembau*:—"I am satisfied that Sichik was never unwilling to take the child Loyak and therefore hold that according to the custom she should have both custody of the child and transmission of the land. Order made accordingly for transmission to Sichik as guardian of Loyak."

Ungkar appealed.

F. W. DOUGLAS, Esq., *Commissioner of Lands* and HAJI SULONG, *Undang of Rembau*, upheld the order of the Collector.

Afterwards Loyak died and the land was transmitted to Sichik in her own right; Ungkar petitioned the *Undang* as to burial expenses and the house, and an enquiry was held with the aid of the eight *lembagas*; it was decided:—

- (a) that the transmission to Sichik as guardian, and the subsequent transmission to Sichik herself, were correct according to *adat* but in any event not subject to review by that body;

- (b) that in contemplation of *adat* the house was built by Ungkar not for himself but for his wife and her issue and on her death it must go to her *waris* and not to the widower; that the house, in fact, is a kind of *charian laki-bini* which has never been "divided" on death or divorce;
- (c) that the burial expenses of Sa'ani were properly chargeable to her *waris* and not to the *charian* of Ungkar and Silong and that Ungkar was therefore entitled to recover the \$70/- from Sichik, the *waris* to whom Sa'ani's ancestral property had descended;
- (d) that the burial expenses of Silong were properly chargeable to the *charian* of Ungkar and Silong, and Ungkar therefore could not recover them from any one;
- (e) that similarly the burial expenses of Minah, who died in wedlock, were payable by her husband and if Ungkar in fact paid them he did so for his own reasons and could not afterwards recover from her *waris*, and
- (f) that since Ungkar had refused custody of the granddaughter to the *waris* it was his own fault that he incurred the burial expenses and he was estopped by his conduct from recovering them against the *waris*.

[*Note*.—It was stated in subsequent proceedings that Sichik had actually asked to be allowed to remove the body of Loyak and bury it at her own expense, and this Ungkar had refused.]

#### J. C. C. S. 404/23.

Ungkar, being dissatisfied, brought an action against Sichik in the Supreme Court; in form it was an original suit, but in substance it was an appeal against the decision of the *Undang* and *lembagas*; the defence was *res judicata* but the pleadings were defective and the suit consequently abortive.

#### J. C. C. S. 30/24.

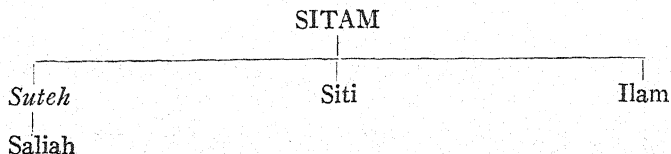
Ungkar then brought a fresh suit, claiming the house, as a moveable article of *charian*, and the various burial expenses set out above.

REAY J. C.:—*held*, that plaintiff was entitled to judgment for \$70/- but defendant must have her costs.

(No written judgment was given).

**Re SITAM dec.***Land Case 110/27.*

Funeral expenses are an actual charge on customary property and the Collector has power to order sale to enforce satisfaction of such a charge.



All these were women.

Sitam left one *kampung*, one sawah and a half share in a *dusun*; the funeral expenses were \$50 of which Saliah had paid \$40.

Saliah, Siti and Ilam agreed to divide the *kampung* and *sawah* equally but Saliah claimed the share in the *dusun* for herself, on the strength of an irregular document.

E. N. TAYLOR, Esq., *Collector, Rembau*.—"In my opinion the document is void as to a disposal of the land and I divide all three lots between the three *perut* in accordance with the ordinary rule.

It is clear, however, that Saliah paid the larger share of the funeral expenses, which should have been supplied by the three *perut* in equal shares.

I therefore suspend registration till Siti and Ilam pay \$23 to Saliah. In default of payment within thirty days, Sitam's half share of the *dusun* to be auctioned." [Under § 11, ii of the Customary Tenure Enactment, 1926.]

The \$23 was paid then and there.

**Re MONIT dec.***Land Case 157/23.*

Devolution of ancestral property—the rule of equal division *per stirpes* may be varied in favour of the female relative who maintains the sons of the deceased.

Monit left four lots of ancestral land and four young sons but no daughter; application for transmission was not made till ten years after Monit's death.

Pondil, a cousin of deceased, claimed all the property on the ground that she had maintained the four sons.

Siti Romah and Sinap, sister and niece of Pondil, claimed to share the property.

It was shown that the whole of the holding of the mother of Pondil and Siti Romah, two lots, had been transmitted to Siti Romah and Sinap.

E. T. JAMES, Esq., *Collector, Rembau*:—transmitted all the land to Pondil.

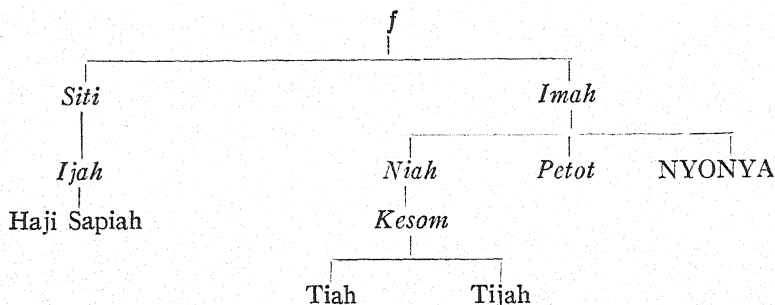
*Note.*—Under later legislation the sons would take a joint life-interest with survivorship, but the principle could still be applied by registering the *de facto* guardian only as proprietress in remainder, instead of all the female relatives of the same degree.

An infant can be registered forthwith as a life occupant (page 227); the proprietress in remainder will always be the proper guardian of the infant.

**Re NYONYA dec.***Land Case 109/26.*

A great-niece is "nearer" and does exclude a first cousin once removed (*anak sanak ibu*) from the inheritance of ancestral property.

The power to grant a life interest is discretionary and will not necessarily be exercised in favour of sons.



All these were women.

Haji Sapiah claimed the ancestral land of Nyonya who had no daughter. It was alleged that Haji Sapiah had cherished Nyonya during old age; the *lembaga* was of opinion that such cherishing (*bela'h*) is merely a ground on which the family may by *pakat* allow the cherisher to succeed to a share, and confers no legal rights.

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted all the land of Nyonya to Tiah and Tijah equally.

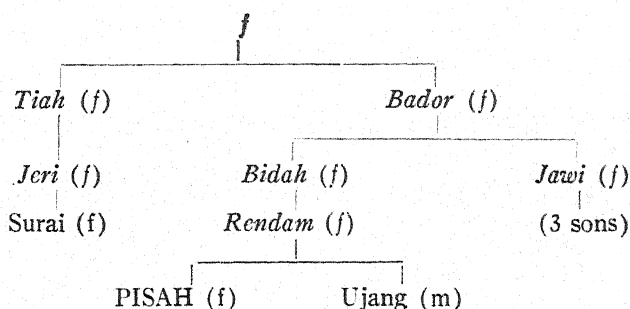
Afterwards the sons of Nyonya claimed a statutory life-interest (*hasil mentara hidup*); Tijah resisted the application on the ground that one of them had received, and subsequently sold, a share of the ancestral land from Petot and another had obtained a share of Nyonya's land during her life.

It was also shewn that Nyonya had sold some of her ancestral land to go to Mecca but became ill and did not go and that her *waris* had never recovered the money from her husband and sons.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"I am clearly of opinion, especially in view of the word "competent" in § 12 of the Customary Tenure Enactment, that the power to grant *hasil mentara hidup* is discretionary and that there is no absolute right to it. This is plainly a case where the discretion will be exercised to withhold this land from the sons and give it to the female heirs unencumbered by a life interest . . . . the application is therefore dismissed."

**Re PISAH binti RIPIN dec.***Application 9/16.*

A second cousin once removed, (*indok sanak datoh*) may exclude a brother from succession to ancestral property.



Ujang and Surai competed for the land.

W. R. BOYD, Esq., *Collector, Rembau*:—"Surai appears to be the nearest relative in the female descent and within the required nearness of relationship to oust male claimants."

He accordingly transmitted the land to Surai.

**Commentary.**

Under modern conditions the brother would probably have received a life interest, but the power to grant that is discretionary; there are no definite rules, except that direct female descendants invariably exclude all male claimants.



**Re SITI dec.***Land Case 155/27.*

A life-interest is not to be given to a son or brother where the remainder is to a close relative.

Siti left ancestral land, and an infant son. Her sister took charge of the boy and applied for transmission.

The only question was whether the son should be registered as a life occupant. The *lembaga* said:—

“ I oppose any idea of *hasil mentara hidup* for the son in this case. It is only correct to grant it where the female relative is distant, such as *sanak datoh*; here the *waris*, is own sister to deceased and will in any event cherish the boy.”

E. N. TAYLOR, Esq., *Collector, Rembau*:—“ I agree with the *lembaga*.”

He accordingly transmitted the land to the sister only.

**Re MUNAH dec.**

*Land Case 104/27. N. S. 2660/27.*

Infants can be registered forthwith as life-occupants and no caveat is required.

This was a reference to the Resident by the Collector, Rembau.

The Hon. Mr. B. W. ELLES, *British Resident*, (after consulting J. L. McFALL, Esq., *Commissioner of Lands*) gave the decision stated in the headnote.

**SAHARA v. ABAS.***Civil Suit 85/26.*

The holder of ancestral property has the right to exclude male members of the family unless their claim to enjoyment of a share has been formally established.

The plaintiff was the registered proprietor of E. M. R. 209 and 211 Bongek. The defendant invaded the land and prevented the plaintiff from entering or enjoying it; she prayed for an injunction to restrain defendant from repeating or continuing this interference.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"The parties in person. They are related. The defendant admits the facts and alleges that on the transmission of the land to the plaintiff, the plaintiff undertook to pay certain money for the support of the defendant and the defendant's brother; defendant also alleges a right to *hasil mentara hidup*. It is clear that the plaintiff, as the registered owner, is entitled to undisturbed possession. If the defendant wishes to press his claim it is open to him to apply to the collector under Section 37 Land Enactment or to sue for money due. He has no right to disturb the plaintiff's occupancy and the plaintiff is entitled to the injunction prayed for.

The plaintiff also asks for damages, \$50/—, for disturbance and the defendant admits having prevented her from cultivating the *sawah* and collecting the produce of the fruit trees.

"I give judgment for the plaintiff for an injunction restraining the defendant from entering on, or otherwise howsoever disturbing, the plaintiff's occupancy and enjoyment of E. M. R. 209 and 211 Bongek until the further order of this Court or of the Collector of Land Revenue, Rembau and for \$50/— and costs."

**Re ITAM dec.***Land Case 35/26.*

The principles governing distribution of ancestral property by *pakat*.

Itam left two daughters and a sister; they proposed to divide the ancestral land equally—one-third each; the *lebaga* could not say whether such a *pakat* was in accordance with the custom or not. The Collector called for further evidence and a competent witness deposed:—

“ The daughters of a deceased can, by *pakat*, allow the sister of the deceased, their aunt, to have a share provided they all agree. They could also allow a more distant relative, *e.g.*, a cousin, to have a share provided that all nearer relatives agreed. But if two daughters of a deceased agreed to give a second cousin a share, and a first cousin objected the objection would be sound, and if the daughters refused to give that first cousin a share then the Collector should hold that the *pakat* was bad and give half to each daughter disallowing all the cousins. Nothing can go to a distant relative unless all nearer or equally near relatives consent. All this, of course, is understood to refer to *pesaka* only.”

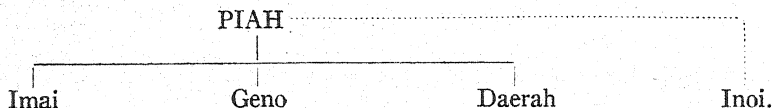
E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted one-third to each of the two daughters and one-third to the sister, as prayed.

[*Note*.—Contrast *Re Piah dec.* (p. 230) where a purported *pakat* was held to be bad.]

## Re PIAH dec.

*Land Case 47/26.*

If the terms of an alleged *pakat* are not clearly proved ancestral property must be transmitted according to the strict rule of equal distribution among direct descendants *per stirpes*.



All these were women.

Piah left eight lots of ancestral land; seven were divided equally between Imai and Daerah without dispute, Geno having been adopted in infancy by one Sitam, a cousin (degree not stated). The eighth lot, E. 876 Batu Hampar, was a bamboo grove; Imai wished to divide this between herself, her two sisters, and Inoi, (another cousin, degree not stated). Geno claimed the whole of it. Daerah claimed to divide with Geno, excluding the other two, and offered to give Geno part of a *sawah*.

Inoi claimed that a *pakat* had been concluded in Piah's life-time and that by its terms she, Inoi, was entitled to one half; she was willing however to waive part of this claim and take a quarter only, provided the other three claimants took a quarter each.

The *lembaga* supported the proposal that the disputed lot should be shared by all four.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The custom is clear; the daughters have a clear right to succeed; they may waive their claim to a portion in favour of a suitable female relative, and the Collector *may* order accordingly, but only if the legal heiresses concur.

It is clear that in this case the family deliberately registered Piah as sole owner of the lot now in dispute, and since they do not now agree the Collector must follow the strict *adat* and those who want Inoi to have a share can subsequently transfer to her.

In any case such a *pakat* as that alleged is not a good ground of claim under §37A, and the terms of it are not clearly proved; the Dato does not really know much about this family. It is agreed by all that neither Geno nor Inoi has any claim to the seven lots, so I transmit these to the two daughters claiming, in equal shares, and the disputed lot to the three daughters equally. Those who want to *pakat* can transfer.

## Commentary.

It seems doubtful whether Geno had a good claim, for adoption usually involves waiver of all claims to succeed to the natural mother's property, and on her own admission Geno had no claim to any of Piah's other land; all parties however admitted that Geno was entitled to some share in the disputed lot—the main controversy was as to Inoi's claim.

Probably this bamboo grove was regarded as comparable to a *dusun* in which all the members of the *perut* were entitled to share (*c.f.* Parr and Mackray, at p. 68). Inoi made no claim to the *kampung* and *sawah* land descending from Piah.

**Re AMAT bin MUAH dec.***Land Case 123/26.*

A mere change in registration of title without any substantial change of ownership does not affect the status of the land under the custom.

Remah, the sister of the deceased, claimed that the land in question was *pembawa*, and should therefore return to her, but it appeared from the title that the land in question was alienated during the marriage of the deceased.

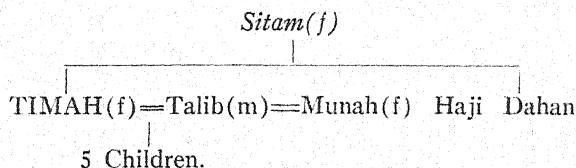
The *Penghulu* then deposed:—"E. 1706 is really *pesaka*—they let it revert to Government for non-payment of rent, but applied for it again and got a title so as it is the same land it still ranks as *pesaka*."

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the land to Remah accordingly.

**Re TIMAH dec.***Land Case 154/25.*

The proper guardian of infants is not their father but their *waris*.

In the absence of a near female relative a woman may be adopted by the deceased wife's family so as to become her sister for the purposes of *ganti tikar* and guardianship, but this confers no rights to inherit the ancestral property of the deceased.



Sitam died in 1922 leaving some ancestral land at Gadong, and one daughter, Timah, who was married to Talib and possessed three lots of acquired land. Talib had another wife named Munah. Timah died three months after Sitam, leaving three daughters and two sons, all infants. A few months later Timah's brother, Haji Dahan, "adopted" Munah as his sister. Talib claimed that by virtue of the adoption, the whole of the land ought to be transmitted to Munah, with remainder to Timah's daughters.

Haji Dahan admitted that Munah was his sister by adoption, but contended that all the land should nevertheless go to Timah's daughters. The *lembaga*, (the Dato' Perba Salleh) said that under the *adat* Munah ought to succeed to all the land, ancestral or acquired, and that after her death Munah's daughters, whether born before or after the adoption, should share it equally with Timah's daughters.

The trial Collector reserved judgment, and after consulting A. G. MORKILL, Esq., *District Officer, Tampin*,

E. N. TAYLOR, Esq., *Collector, Rembau*:—"It is common ground that the true ownership of all these lands vested in Timah when Sitam died. I do not consider it necessary to bring Timah on to the Register; it suffices to transmit the land from Sitam to the successors-in-title of Timah.

By the ordinary rules of succession to Customary Land, these lands should pass to the three daughters of Timah in equal shares (Parr and Mackray, p. 68).

Against this, Munah claims a life interest with succession for her daughters (whether born before or afterwards) equally with those



of Timah on the ground, as she alleges, that she, Munah, was adopted into Timah's family and became sister by adoption to Timah. This claim is preposterous and must be rejected for the following, among other, reasons:—

- (a) the "adoption" alleged took place after Timah's death and cannot affect the rights which accrued to Timah's children at the instant of Timah's death. In my opinion that is sufficient to dispose of the claim of Munah;
- (b) even if Munah was a natural sister of Timah she could not succeed against Timah's daughters; she could only succeed in the absence of daughters (Parr and Mackray p. 69); *a foritori* as an adopted sister she cannot succeed; succeed;
- (c) the *kadim adat* relied on by Munah is inapplicable because even where it is properly used it gives no rights of succession, except where the adopting is done by a woman with no natural daughters;
- (d) there is no reason to believe in the existence of any custom under which children by posthumous adoption share equally with natural children after a life interest.

I regret that I am compelled to reject a claim supported by the *lembaga* but this claim is so unreasonable that in my view the *lembaga* is discredited by lending his support to it.

This land descended according to the custom from Sitam to Timah, and from Timah to the infants herein, so I think it is proper for Timah's family, and not her husband, to have control of it during the infancy of the daughters. Haji Dahan was the only member of the family before me; he instituted these proceedings solely on behalf of the infants; he appeared to be a suitable person and I therefore make him the trustee rather than Talib who put forward an adverse claim which I hold not merely to have failed—but to have been bad *ab initio*."

He accordingly transmitted all the land to Haji Dahan under caveat to protect the interest of the three infant daughters of the deceased.

Talib appealed, but at the last moment abandoned his contention that the adoption could affect the succession to the ancestral lands, and objected only to the appointment of Haji Dahan as trustee; he had no alternative to suggest except that he himself should be appointed.

M. D. DALY, Esq., *Commissioner of Lands*, and Inche ABDUL-LAH bin HAJI DAHAN, *Undang of Rembau*:—"In this case neither the facts nor the custom which applies are now in dispute;

the lands are ancestral lands and may properly be deemed to have vested in Timah, the wife of appellant, at the time of her death; these lands, following the rules started in Parr and Mackray at page 68, go in equal shares to the daughters of Timah deceased.

For the reasons given by the Collector we are not prepared to appoint the appellant as guardian and we consider Haji Dahan, the uncle of the three daughters, to be a proper person to be their guardian.

This appeal is dismissed, and the order of the Collector is confirmed."

The appeal as to the acquired lots was heard separately. As to these the appellant's contention was *mati bini tinggal ka-laki* but he desired to register them in the names of the two sons. He tendered witnesses.

The Commissioner declined to hear the Dato' Perba Salleh, as in view of his evidence before the Collector he did not consider that the slightest reliance could be placed on his evidence. Two other witnesses, however, were examined; one said that half the *charian* property should be transmitted to the husband and half to the female children of the woman; the other said that the whole should be transmitted to the husband. *Daly* then adjourned the appeal *sine die* and referred the matter back to the Collector to take further evidence as to the applicable custom, and to search for former decisions.

Enquiries were continued for another year—the whole of the existing records were searched in vain for a single case where the facts were the same—current evidence conflicted—some further information was, however, obtained and eventually the Collector summoned the parties for a further enquiry.

Additional evidence was given and the following facts were proved or admitted. The appellant was of the Tiga Batu Tribe of Naning and was married to Timah, a Biduanda of Rembau, in 1908; the three lots in question were acquired in 1909 and 1911. In 1916, the marriage still subsisting, appellant married Munah, who was a Selangor woman and not subject to any matriarchal custom. Timah died in 1922 and forty days after her death Haji Dahan brought Munah to Gadong and in the presence of seven or eight *lembagas* (including representatives of the Eight, and of the Twelve) he killed a goat and with the ceremonies (*ista adat*) adopted (*kadimkan*) Munah to be his sister in place of Timah, his only natural sister, and installed her as the owner of the ancestral land.

On, or shortly after, the hundredth day a buffalo was killed and a further ceremony (*ista adat undang kadim pesaka*) was performed in the presence of the *Undang*, and all the twenty *lembagas*.

The appellant agreed to all this, and in consequence was not *jeput* but continued to live with Munah and Timah's children, in the house which he and Timah had built on the ancestral land, in the same way as a man continues with his deceased wife's family when he marries her sister by *ganti tikar*. This arrangement was a compromise between Haji Dahan and Talib who had had financial disputes during Timah's life and could not come to any settlement by way of division on a normal *jeput*.

Two years later they quarrelled again and Talib and Munah then removed to land of their own, taking the children with them.

The evidence as to custom was to the effect that a man may marry his deceased wife's sister either before the hundredth day or after *jeput*, that in either case the transaction is termed *ganti tikar* and does not affect questions of property, and that in any event, whether the widower marries her or not, the deceased wife's sister is the proper guardian of the children.

E. N. TAYLOR, Esq., *Collector, Rembau*, thereupon revoked the appointment of Haji Dahan as trustee, and ordered the ancestral lands to be registered in the name of Munah as trustee, entering a caveat to protect the three daughters of Timah.

In view of this Talib withdrew his appeal, and the Collector then ordered the three acquired lots to be registered in the same way. The parties and the *lembaga* all assented and there was no further appeal.

### Commentary.

Talib was married to two women concurrently—a breach of the monogamous rule—and the adoption seems to have been designed to condone this and at the same time to provide for the care of the children and their property; they had no near female relative. The trouble arose from the conspiracy between Talib and the Dato Perba Salleh, to seek by perjury a share of the inheritance for Munah.

The terms relating to *kadimkan* are recorded as they were given in evidence—they differ from those used in the pleadings and cannot be regarded as authoritative. E.N.T.

**SAPIAH v. SINTAN.***Land Case 28/22.*

Adoption (*kadimkan*) once performed is irrevocable.

Sintan was a Rembau woman and the holder of E. 347, Pedas. She adopted Sapiah, a foreign Malay, and Sapiah's infant daughter, Timah, with the approval of the *Undang*, and promised to give them half the land. The adoption was recorded in writing and it was understood (though on this point the document was silent) that Sapiah was to live with, and cherish, Sintan. After about eight months the parties quarrelled and Sapiah left Timah with Sintan and went to live elsewhere and was married successively to two men. Timah died and was buried at Sintan's expense. Seven years later Sapiah claimed to be registered as proprietress of half the land.

Sintan contended that Sapiah had failed to perform an essential condition, *viz.*,—to live with her on the land.

The *Undang* gave evidence as to the fact and validity of the adoption.

R. IRVINE, Esq., *Collector, Rembau*:—held that the adoption could not be rescinded, but that in view of Sintan having maintained and buried Timah, Timah's share returned to Sintan; he accordingly ordered transmission to Sapiah of an undivided quarter of the land.

**Commentary.**

No evidence of ceremonies was given, but the *Undang* expressly stated that *kadimkan* is irrevocable; apparantly the adoption was a limited one and Sapiah obtained no rights to inherit, but only a right to the half share which Sintan promised to give. The land was *waris* land, not *tanah tebus* (in the historical sense) so the consent of her tribe was not considered necessary.

There is nothing to shew whether Sapiah became a member of Sintan's tribe for exogamous purposes.

The facts which led to the adoption were exceptional and it would be most unsafe to regard this case as an authority for anything further than the proposition stated in the headnote.—E.N.T.

**Re SITIAWA dec.**

*Land Cases 189/27 and 4/28.*

Both males and females may be adopted *kadim adat dan pesaka*.

At this trial it was proved by the evidence of two *lembagas* who were present at the ceremony that the deceased was married to Haji Jamal, but had no children; that she adopted as a son one Haji Amat, whose mother was a Johore Malay, and who was thereafter known as Haji Amat bin Haji Jamal, and also a small Chinese girl, whom she named Bedah binti Haji Jamal. Both were adopted, *kadim adat dan pesaka*, with slaughter of a buffalo and with the presence and approval of the then *Undong* and all the *lembagas*; no objections were made either at the adoption or after the death of Sitiawa.

E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted all the ancestral property of the deceased to her *waris* as trustee for Bedah.

Subsequently, upon a further enquiry but without any dispute, the *charian laki-bini* property of deceased and Haji Jamal was distributed by an order of the same Collector to Haji Amat, and Bedah's trustee, one lot being retained by Haji Jamal as *kepan*.

**Re SIADUS dec.***Land Case 335/23.*

A child, even of another race, if fully adopted, is entitled to inherit ancestral land.

Siadus had no natural children, but two sisters; she left one acquired and two ancestral lots; her husband predeceased her. One sister, Saliah, claimed the ancestral on her own behalf, and the acquired on behalf of Puteh, an adopted daughter of the deceased; alternatively Saliah claimed to divide all three lots with the adopted child. The other sister made no claim.

The *lembaga* said that an adopted daughter has the same rights as a natural daughter but he recommended dividing the ancestral between the sister and child, and giving all the acquired to the child.

It was shewn that the *Undang* was present at the adoption ceremony, that a buffalo was killed and a public feast held, that the customary fee of \$14 was paid to the *lembagas* and that oblations of rice were made. The child was a Chinese one who had been bought by the husband of the deceased for \$95; the evidence conflicted as to whether the tribe knew the origin of the child at the time of the adoption.

Two other *lembagas* said that the *adat* required division of the ancestral but gave all the acquired to the adopted child.

E. E. PENGILLEY, Esq., *Collector, Rembau*:—transmitted the ancestral lots to Puteh and Saliah equally and the whole of the acquired lot to Puteh.

**Commentary.**

The Record does not shew on what ground Saliah claimed to divide the ancestral land with the adopted daughter, but as the other sister did not claim it seems probable that on a fair division of all the ancestral property in the family Saliah could have claimed to share even with a natural daughter. On this assumption the decision can be reconciled with the whole of the evidence, and with the other cases on Adoption. E.N.T.

**Re LEHA dec.***Land Case 156/27.*

For the purpose of adoption a person from a different *luak* ranks as a foreign Malay, whether a member of the adopting tribe or not.

Leha and her first husband acquired one lot of rubber land which remained to Leha on the husband's death; from the profits of this land Leha, while unmarried, bought a *kampung* lot; it was admitted that both lots ranked as *harta dapatan*.

Leha, having no daughter, obtained possession of a child from Naning, named Isam; she made a feast of a goat and cut the *jambul* (a tuft of hair) and made a vow or formal declaration (*niat*) that she would give property to the child. The *sembaga* was present at this ceremony and expressly denied that it amounted to *kadimkan*.

Afterwards Leha gave all her ancestral land to her only niece, Jamiah, and went on pilgrimage taking Isam with her. Leha died at Mecca and her friends brought back Haji Isam who thereafter lived with Jamiah.

Jamiah claimed both lots of land.

On behalf of the infant Haji Isam it was contended that the ceremony amounted to an adoption and entitled the child to both the acquired lots. The tribe of origin of the child could not be ascertained.

E. N. TAYLOR, Esq., *Collector, Rembau*:—"The authorities are clear that adoption does not carry the right of inheritance unless the proper ceremonies are observed. Here it is clear that Haji Isam could not be so adopted as to become the heir of Leha without the approval of the *Undang* and a buffalo feast and neither of these has been given. I therefore give judgment for Jamiah whose claim is not contested on any other ground."

An appeal was lodged on behalf of Haji Isam.

The Hon. Mr. E. C. H. WOLFF, *British Resident*, and Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—"The question is whether Haji Isam was or was not legitimately adopted by Leha. The *sembaga* of the Tanah Datar tribe has stated in evidence that she was not, as the proper ceremonies for adoption from outside the tribe were not observed.

The Dato' Rembau states that whatever the tribe of the child may have been in Naning, her position in regard to adoption was that of a person outside the Rembau tribe of Tanah Datar.....

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We suggest to Jamiah that she should adopt Haji Isam as *kadim adat dan pesaka* and state that if she will do this we will transmit both lots to her. She agrees.

We order that E. M. R. 155 and E. M. R. 619 be transmitted to Jamiah, but that the transmission be suspended until such time as she has formally adopted Haji Isam as *kadim adat dan pesaka*."

### Commentary.

The conclusion of this case was clearly nothing but a device of the Resident to benefit the infant, who would otherwise have been left cut off from her natural family and without expectation of ever receiving any material benefit from her "adoptive" family. The result of adoption by Jamiah *kadim adat dan pesaka* was to put Haji Isam in the same position as a natural daughter of Jamiah, with expectations, *inter alia*, of inheriting a share of the ancestral property derived from Leha, and thus went a great deal further than Leha's manifest intentions. There was, however, no other way by which any portion of the property could lawfully devolve on Haji Isam and it seems clear that Leha had in truth intended to benefit the child.

The case is, however, a sufficient authority for the proposition stated in the head-note. E.N.T.



## Re KEK SIAN dec.

*Land Case 67/18. R. L. 473/20.**Administration Suit 10/19.*

Limited adoption of a non-Malay male person.

Kek Sian was the owner of two lots of land. He was converted to the Muhammadan religion, one Ismail being his sponsor; he married a Malay woman and shortly afterwards died. Ismail paid the funeral expenses and claimed the land, alleging that he was the adoptive father of the deceased. The *sembaga* averred that deceased had been *kadim-kan* into the Mungkal tribe but no evidence of the ceremonies was given.

A Chinese creditor lodged an objection.

W. R. BOYD, Esq., *Collector, Rembau*:—"I am of opinion that this case should not be dealt with under the Land Enactment but an Administrator should be appointed to pay the debts etc."

\* \* \* \* \*

Kek Tuan Keong, first cousin of deceased, who had been living in Perak, applied for letters of administration. At this trial it was proved that the alleged adoption was performed publicly in the presence of the *sembaga* of Ismail's wife (Mungkal) and two other *sembagas*. A goat was killed and Ismail blooded his son and Kek Sian in token that they became brothers. On the following day Kek Sian was circumcised, and the witness added:—"He had not yet been married; he could not be married without being circumcised first, but he could be adopted before being circumcised."

For the petitioner, *Harte-Lovelace* contended that the land was not even *charian bujang*; that being acquired before the man entered (if he did enter) the tribe, it did not come under any of the headings of customary property; that it was outside the jurisdiction of the tribe and therefore outside the custom.

G. A. de C. de MOUBRAY, Esq., *Deputy Registrar, Rembau*:—"The chinaman obtained this property, *charian bujang*, before he *masuk melayu*—he entered into the tribe with it; it was *pembawa* of Chinese origin when he married. According to the Rembau *adat*, *charian bahagi*, *dapatan tinggal*, *pembawa kembalek*—thus it should return to its place of origin—in this instance Chinese—the usual origin being the *waris jantan*, in the first place his mother.

The general principle concerning *charian bujang* in the case of a Chinaman adopted into a Rembau tribe, I hold to be:—Property acquired before adoption should go to the Chinese relatives—property acquired after adoption should go to the Malay adoptive relations."

*Ordered*.—That Kek Tuan Keong be appointed administrator.

**Commentary.**

This case is reported because it is the only one of its class, but with respect to the Registrar it is submitted that the argument does not justify the decision.

*Masok melayu* is an expression common throughout the Peninsula for conversion to Islam and has nothing to do with adoption. The evidence shews that Ismail fully appreciated the distinction between the purely customary ceremony for entry into a tribe, and the purely religious ceremony for entry into the Moslem community.

The rule *pembawa kembalek* applies only to the dissolution of marriage, and as against the widow both Ismail and Kek Tuan Keong could equally have relied on it, but the widow never claimed. The application as between the natural and adoptive relations was an undue extension of the rule and amounts to a declaration that, on the adoption of the Chinese, his interest in his property was reduced to a life-interest with reversion to his Chinese family—in other words this case decides that though a Chinese can be effectively adopted and can change his religion, yet his property must always devolve according to Chinese law. There was nothing in the case to support this proposition so it appears that the Registrar misdirected himself. E.N.T.

# Re HAJI ABDUL RAHIM dec.

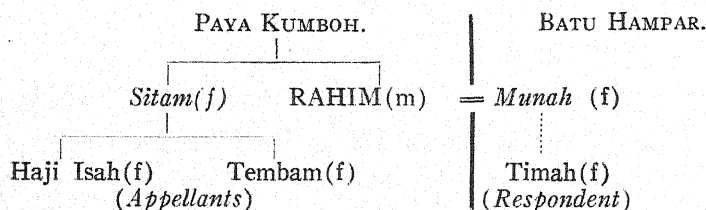
Land Case 169/27.

Limited adoption of a woman from outside the tribe—*kadim adat pada lembaga* confers on the adoptee the right to inherit the *charian laki-bini* of the adoptive parents.

Munah was a member of the Batu Hampar tribe living at Penajas under the jurisdiction of the Dato Gempa, (*Baroh*). She married Haji Abdul Rahim of the Paya Kumboh Tribe and they lived for a time in Naning where they adopted a female child named Timah. They had no natural children. Some years later they returned and settled permanently at Chembong on land obtained from Haji Rahim's family, Munah thereupon passing into the jurisdiction of the Dato Sutan, (Batu Hampar, *Darat*). At the time of Timah's marriage, Timah was formally adopted into the Batu Hampar (*Darat*) and thereafter lived continuously at Chembong under the Dato Sutan. The other facts sufficiently appear from the following extracts from the statutory report.

E. N. TAYLOR, Esq., *Collector, Rembau*:—

“The family is as follows:—



2. Rahim left one rubber lot, E. 1223 Chembong, which was admittedly *charian laki-bini* of Rahim and Munah. Munah died first. They had no natural children and after Munah's death Rahim lived with Timah who claims to be their adopted daughter. Timah paid the funeral expenses of Munah and Rahim.
3. If Timah did not exist, the *waris* would be entitled to all the land, provided they paid the funeral expenses (*Re Kulop Kidal dec.*) [p. 89]. If Timah were a natural daughter, then since she paid the funeral expenses, the *waris* would be absolutely barred (*Re Kahar dec.*) [p. 129.] The burial expenses of both Munah and Rahim are a customary charge on this property.
4. I held that Timah was adopted and transmitted the land to her; the *waris* of Rahim appealed. They admitted

that if Timah was adopted she is entitled to E. 1223 and the Resident ordered a further trial of the issue:—

“ Was Timah adopted? ”

5. It is admitted by everyone competent to testify that Timah was not fully adopted *kadim adat dan pesaka*—It is however fully established by the evidence that Timah was adopted into the Batu Hampar Tribe, *kadim adat pada lembaga*. It is clear that no objections were made at the time of the adoption.
6. The issue, as framed by the Resident, does not contemplate the distinction between full and limited adoption and therefore does not, in my view, preclude the appellants from further argument. In my opinion the real issue is this:—

“ Does limited adoption, *kadim adat pada lembaga*, confer on a daughter so adopted the right to inherit her parents' *charian laki-bini*. ”

7. The Resident orally confirmed my view that the witnesses specified in the order for further trial were the witnesses as to the fact of the alleged adoption, and that further evidence of *adat* could properly be added. I therefore annex a summary of the evidence as to *kadim* taken by Mr. de Moubray in L. C. 66/26, [reported at p. 250] and further statements taken by myself. I submit with great confidence that the latter are the most reliable because they are abstract statements of *adat*; I did not recite the facts of Timah's case to these deponents. I consider that the evidence of the Datos Gempa and Merbanga is largely discredited by comparison with their materially different evidence in L. C. 66/26.
8. All this evidence must be weighed in the light of the general principles of the *adat*; These are not absolutely fixed rules, but subject to a few exceptions:—
  - (a) ancestral property cannot be disposed of without the consent of the *waris*;
  - (b) a couple can dispose of their own *charian* as they please;
  - (c) the *lembaga* can sanction anything affecting his own tribe only but a few very important matters, e.g., the *giliran*, are reserved to the *Undang*.

As to procedure—*terangkan kepada lembaga* involves a feast of a goat, but if the *Undang* is invited there must be a buffalo.

9. In my opinion the statements of the Perba and Majinda together establish the truth. In the beginning there were only two kinds of adoption:—(a) full adoption, *kadim adat dengan pesaka* (*pesaka* in this context meaning the *pesaka giliran*) which required the approval of the *Undang* and was applicable to either sex and (b) limited adoption, *kadim adat kepada lembaga*, which was applicable only to immigrant males. I know from a recorded case that the Perba's account of adoption from another *perut* of same tribe is correct. As explained in my general article, [p. 45] the limited adoption of males has become very rare, and (perhaps by confusion with adoption from another *perut* of the same tribe) some *lembagas* have in recent years permitted a third kind which they call *kadim harta*; this means that a woman of another tribe may be adopted with *chechah darah kambing* only, if both *lembagas* assent; since the *Undang* is not consulted *pesaka giliran* is not conferred, but if the *waris* consent *harta pesaka* may be inherited. The case of Munah (Talib's wife) [p. 233] shows that this form is not established *adat*; Munah was first adopted in this way and afterwards her adoption was regularised by *kadim adat dengan pesaka*. It is clear that any kind of adoption confers the right of inheritance of *charian*.
10. Applying these conclusions to the new case it is clear that Timah was adopted in a limited way which nevertheless confers on her the right to inherit her parents' *charian*, especially since there is the definite evidence of the Dato Gempa that Haji Rahim *tentukan* E. 1223 to her. It is abundantly clear that there were no objections at the time of the adoption, either from Haji Rahim's *waris* or from Munah's own original *waris* at Penajis on whose behalf the Gempa attended. Probably Timah could not inherit *harta pesaka* of the Batu Hampar but it is not necessary to decide that point because her adoptive mother, Munah, held no such property and no such claim is made."

The Hon. Mr. J. W. SIMMONS, *British Resident* and the Hon. Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*:—"This case was referred back for further evidence as to adoption of Timah by Haji Rahim and Munah.

We find from such evidence that she was adopted and therefore she inherits her parents' *charian laki-bini*.

Appeal is therefore dismissed."

*Note*.—The doubts and difficulties raised by this case will not arise in future as the *adat* on the points disputed has since been settled at a *Bulat*, which is reported at page 247.

## A BULAT.

25TH NOVEMBER, 1928.

All the *lembagas* having assembled at the *Balai Undang* under the presidency of the Hon. Inche ABDULLAH bin HAJI DAHAN, *Undang of Rembau*,

## IT WAS RESOLVED

(1) *as to full adoption*,

that the desendents of female adopted *kadim adat dan pesaka* are eligible for the *pesaka giliran*;

(2) *as to the limited adoption of females*,

(a) that a female can be adopted *kadim adat pada lembaga*;

(b) that a female so adopted, and her descendents, can receive *harta charian* of the adopting family either by gift or by inheritance;

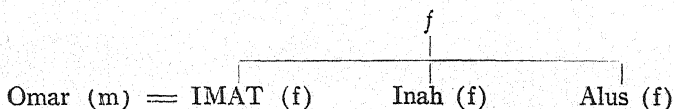
(c) that a female so adopted, and her desendents, cannot receive *harta pesaka* of the adopting family by gift or by inheritance;

(d) that the descendents of a female so adopted are not eligible for the *pesaka giliran* of the adopting family.

The *Undang* concurred in all these decisions [D.O.R. 782/28].

**Re IMAT dec.***Land Case 84/25.*

Observance of the proper ceremonies is essential to adoption.



Imat died early in 1924 leaving two lots of ancestral land. two sisters, a widower and one Munah of another tribe whom, it was alleged, Imat had adopted. Munah was about 13 years old at the date of the trial (May, 1925) and had lived with the deceased for the last three years of her life. Inah stated that Munah had looked after Imat's *sawah* for three years.

Inah and Alus claimed the ancestral land.

Omar claimed that Munah was entitled to the ancestral land; he contended that Munah was properly adopted as a member of the tribe in the presence of the headman of the *kampong*; he admitted that the *sembaga* was not present and that the ceremony took place after Imat's death.

J. S. W. REID, Esq., *Collector, Rembau*:—transmitted the land to Inah and Alus.

(No judgment was ever delivered.)

Omar appealed, on behalf of Munah.

B. W. ELLES, Esq., *Commissioner of Lands and Inche ABDULLAH bin HAJI DAHAN, Undang of Rembau*:—"It is clear from the evidence that this was not a proper adoption according to the custom. The *sembaga* of the tribe of the alleged adoption was not present and never consented. The appeal must therefore fail."

**Re SIATO dec.***Land Case 327/24.*

Full adoption of a member of the same *perut* can be effected without any ceremony other than a family feast. The person so adopted is not precluded from inheriting from her natural mother also.

Siato died leaving ancestral lands which were claimed by Inchah, a distant cousin who could not prove the exact degree of relationship but claimed to have been adopted by deceased; this claim was contested by the nephew of deceased. There were no female relatives nearer than Inchah.

The matter was referred to the *Undang* on the ground that there had been proceedings before the previous *Undang* and the effect of these was in doubt.

The *Undang* found that Siato had adopted Inchah, with the consent of Siato's daughter, in order that Inchah might cherish Siato while the natural daughter went to Mecca; that daughter died at Mecca. The *ibu-bapa* was present at the family feast, and the *lembaga* was duly informed; Inchah thereafter lived with Siato. Inchah had succeeded to only half the property of her natural mother, the other half passing by consent to a first cousin, on the understanding that by virtue of the adoption Inchah would inherit Siato's property. On these facts the *Undang* found that there had been a full adoption and that Inchah was entitled to all the rights of a natural daughter of Siato.

E. E. PENGILLEY, Esq., *Collector, Rembau*, gave judgment accordingly and transmitted all Siato's property to Inchah.



**Re TEMBAM dec.***Land Case 66/26 and Tampin Case 7/26.*

Property can be inherited by a child informally adopted by another person of the same *perut*.

Tembam left property both in Rembau and in Tampin.  
The petitions having been consolidated.

G. A. de MOUBRAY, Esq., *District Officer, Tampin*:—

“ The facts are either agreed to by all the parties, or not actively disputed by any of them, that the claimant Limah and the objector Siti are both very distant relatives of the deceased Tembam, and are of the same *perut* as she was; that Limah was adopted informally by Tembam and given ancestral and acquired property by her during her life time.

The two bits of land the subject of the claim are, firstly a piece of ancestral land (customary) in Rembau district and secondly, a piece of acquired land in Keru in which Limah has a certain direct interest, the land having been opened by Tembam, Tembam's husband Loyok, herself, and her husband Dollah. I am satisfied that the effect of the custom (not argued in this case) was for Loyok's share on his death to go to Tembam, and Dollah's share on divorce to go to Limah (except in so far as he could have claimed a share and made it good at divorce).

I have made no attempt to apportion this direct interest as between Tembam and Limah. There is no need to do so if it is held that Limah can inherit from Tembam.

The case turns on this question:—Can property be inherited by a child informally adopted by another person of the same *perut*?

The expert evidence is not unanimous on this point.....

All the other evidence, though conflicting on numberless other points, supports Datoh Merbangsa's evidence on the point at issue .....that adoption within a tribe and from outside a tribe are two totally different things. He goes so far as to say that the term *kadimkan* is applicable only to the latter.

Though it is not clear from the recorded evidence, my impression was that what was at the back of these men's minds was that the qualification for obtaining the *pesaka* of a tribe, *i.e.*, for being eligible for election to the various chieftainships within a tribe, was the thing that really mattered. The inheritance of property was of minor importance compared to becoming an *orang beradat* (note that the terms *adat* and *pesaka* become very nearly synonymous when used in this sense). By a primitive method of reasoning if a certain

thing will qualify a man to obtain the *pesaka* of a tribe it will *a fortiori* qualify him for obtaining the *harta pesaka* of a single member of the tribe. It is clear that a member of the tribe is, without further ceremony, eligible for the dignities in the tribe so the necessity for ceremony in becoming eligible for the inheritance of property within the tribe vanishes.

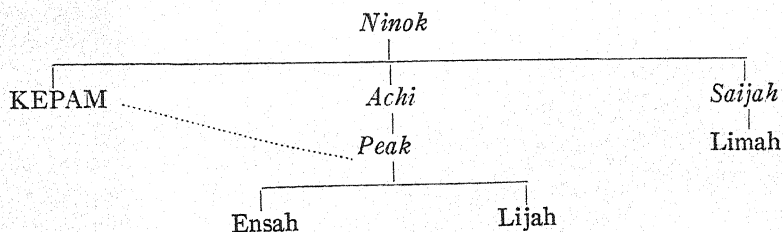
I accordingly hold that Limah has made good her claim to inherit both acquired and ancestral property from Tembam, though she was not adopted ceremoniously, on the ground that she was already a member of the same *perut*."

### Commentary.

This case does not establish any point not already established by *Re Siato dec.*, reported at page 249, but it has been included because the District Officer enquired at great length into some of the principles of adoption; much of the evidence was, of course, irrelevant to the only point at issue. He does not appear to have been aware of the distinction between full and limited adaption within the *perut* and consequently never enquired at all into the question whether, since some property was given to Limah *inter vivos*, Limah was or was not entitled to inherit any more: it seems clear, however, that the Keru lot was acquired after the adoption, and the one ancestral lot withheld was probably *kepan*; as no evidence of burial expenses was given Limah probably paid them in which case she would have been equally entitled to succeed on the basis of limited adoption only. E.N.T.

**Re KEPAM dec.***Land Case 3/27.*

Between near relatives effective adoption can be accomplished without formality beyond a family feast; it confers complete rights of inheritance both on the adopted daughter and on her descendants.



All these were women.

Kepam left three lots of ancestral land derived from her own *nenek-moyang* and two lots which she and her husband had bought from another tribe. It was shewn that her husband died first and the trial Collector (*Taylor*) held on the preliminary issue, (following his own judgment in *Senai v. Kesah*) [p. 120] that these two therefore ranked as ancestral from the death of Kepam.

It was shewn that after the death of Achi her husband married Kepam, *ganti tikar*, and that thereupon Kepam adopted her niece Peak.

Two *lembagas* declared as a matter of *adat* that between such near relatives effective adoption can take place without any formality beyond a family feast, and as a matter of fact, that Peak was actually so adopted.

Peak died before Kepam.

Ensah and Lijah now jointly claimed the whole of Kepam's land, as her granddaughters by virtue of the adoption. Limah contested the claim.

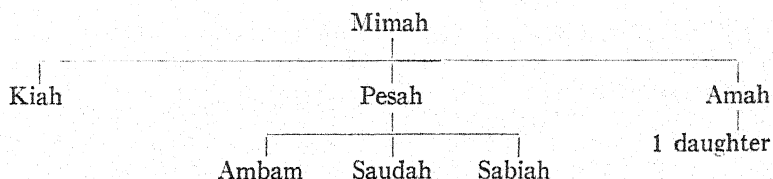
E. N. TAYLOR, Esq., *Collector, Rembau*:—transmitted the whole of the land to Ensah and Lijah.

**KIAH v. AMAH.**

D.O.R. 312/28.

Limited adoption within the *perut*—gift of property is essential to validity.

Where the family property has been fully distributed, the *waris* cannot maintain an objection to the gift, so as to defeat the adoption.



All these were women.

It was admitted that the whole of Mimah's property had been fairly distributed among her three daughters; for the purpose of this distribution no distinction was drawn between property inherited and property acquired by Mimah—the whole being *pesaka* of the next generation.

Kiah published the prescribed notice of intention to transfer part of her ancestral *kampung* to Ambam. Amah objected, and the *lembaga* refused his assent. Kiah applied to the Collector for a declaration that the assent was wrongly withheld; she contended that she had adopted Ambam ten years previously, but admitted that there had been no feast.

E. N. TAYLOR Esq., *Collector, Rembau*:—"The *lembaga's* assent is rightly withheld. The transfer cannot be approved because it would clearly disturb the distribution and as there was no feast and no notification to the *lembaga* the alleged *tarek* was not effective to make Ambam the adopted daughter of Kiah.

Kiah can keep all her share in her own name so long as she lives but if she wants to transfer it she must transfer equal proportions to Pesah and Amah. This is clear *adat* and follows the judgment of Pennington in *Siti v. Siaman*." [page 195].

Kiah appealed.

The Hon. Mr. J. W. SIMMONS, *British Resident* and the Hon. Inche ABDULLAH bin Haji DAHAN, *Undang of Rembau*:—"In this case Kiah, who is the eldest of three sisters, Kiah, Pesah and Amah, desires to be allowed to transfer a half-share of  
1929] *Royal Asiatic Society*.

E. 1408 Selemak (ancestral *kampung*) to one Ambam, daughter of Pesah, whom, so she says, she adopted some years ago. The matters on which there is dispute are two:—

- (i) whether or not Ambam was properly adopted;
- (ii) whether it is in accordance with the *adat* to allow the transfer to her by Kiah of certain ancestral property which, it is agreed, was given to her by Mimah, her mother, when she split up her property among her three daughters.

It appears to be a fact that Ambam has lived on Kiah's land, and in a house situated within a few yards from Kiah's house, for the last fourteen or fifteen years—*i.e.*, ever since her marriage, and in our opinion this may be taken as sufficient evidence of Kiah's desire to adopt her. She cannot, however, be said to have actually been adopted since no property has actually been given her by Kiah. We were told by Dato Merbangsa Kamar and Dato Andika Ismail that for adoption to be effective some property must be given her during the lifetime of Kiah. Kiah now wishes to make the adoption valid by giving her a half-share of E. M. R. 1408 Selemak. After hearing the two witnesses above-mentioned we consider the *adat* to be that, since the land in question has actually been given by Mimah to Kiah and is now Kiah's own property, there is no objection to her disposing of it and that the other sisters of Kiah have no say in the matter.

We accordingly allow the appeal and direct that the *lembaga* give his consent to the transfer.

When this has been done the fact of adoption will be completed and fully proved."

### Commentary.

If Amah's objection had been upheld, it is clear that Pesah would have been equally entitled to object if Kiah had proposed to adopt Amah's daughter; this would have amounted to a decision that a woman cannot adopt without the consent of all her sisters, which is exactly what Amah contended.

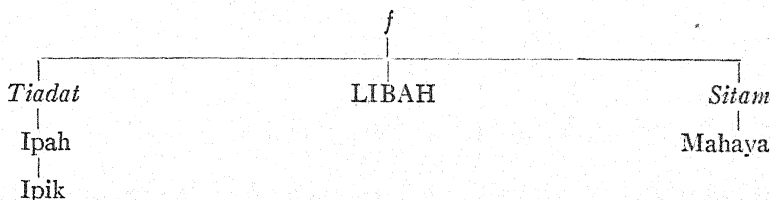
Very great stress was rightly laid on the fact that a complete distribution had been made; it often happens that an elder sister is registered as holder of what are, in reality, her younger sister's shares and in such circumstances an objection to a transfer might very well be upheld.

The case also illustrates the rule that acquired property, once inherited, becomes ancestral. E.N.T.

## Re LIBAH dec.

*Land Case 70/28.*

Limited adoption within the *perut*—the adoptee may inherit the *charian laki-bini* of the adoptive parents.



All these were women.

Libah, having no daughters, adopted Mahaya to whom she transferred all her ancestral land in 1910. About two years later Libah and her husband bought a *kampung* lot; on this they, and Ipik, and Ipik's husband, built a house in which Libah and her husband lived for the rest of their lives, the husband dying first.

From the time the house was built Ipik lived in it with Libah except for a period of two years which she spent with her husband in Selangor; during this period Ipik's child, who was old enough to cook food, remained with Libah, and Ipik, herself visited them about once a month. Ipik, having been divorced, came back and lived continuously with Libah for more than a year immediately preceding Libah's death in 1928. Mahaya never lived in that house but she assisted Ipik to nurse Libah during the fatal illness which, however, only lasted for one week. Ipik paid all the funeral expenses.

Ipik claimed to have been adopted (*tarek*) by Libah and petitioned for transmission of the whole of the *kampung* lot. She admitted that Mahaya had been adopted by Libah but denied that Mahaya had any claim to the one lot in question.

Mahaya claimed the whole of the *kampung*. She said that Tiadat's descendants had inherited their share of Libah's property but inspection of the registers negated this contention. She also said that the funeral expenses were paid, not out of Ipik's own money but out of cash belonging to Libah.

It was admitted that the whole of the lot in question was *charian laki-bini* of Libah and her husband.

The *lembaga* supported Ipik's claim on the basis *anak di-tarek di-beri-kan harta*; he said that there was no feast at the time of Ipik's adoption but that she was nevertheless entitled to inherit the disputed lot because it was *charian* of the adoptive parent.

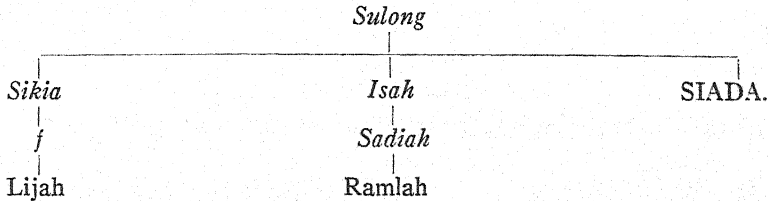
E. N. TAYLOR, Esq., *Collector, Rembau*:—"It appears to be the case that Libah first of all adopted Mahaya and transferred all her ancestral to her and Mahaya still holds it. Afterwards, some years later, she adopted Ipik.

I do not think the question of distribution of ancestral is material to this case because the land in question is admitted by everybody to be *charian* of Libah.

I am satisfied that Libah did adopt Ipik by limited adoption; the case is in several respects similar to *Kiah v. Amah* [p. 253] and to *Re Haji Rahim dec.* [p. 244] and following these cases I give judgment for the petitioner and order that E. 972 Tanjong Kling be transmitted to Ipik."

**Re SIADA dec.***Land Case 12/21.*

Even within the *perut* a definite act of adoption is necessary to confer rights of inheritance.



All these were women.

Siada left ancestral *kampong* and *sawah*.

Lijah, a relative of Siada the precise degree not being proved, claimed on behalf of the grand-niece Ramlah, a child of ten.

Si-Anjong, a member of the same *perut* who had lived in Siada's house and cherished her and paid the funeral expenses, alleged that she was the adopted daughter of Siada and claimed the land.

H. N. HUNT, Esq., *Collector, Rembau*:—ordered both lots to be divided between Si-Anjong and Ramlah—the debts to be shared equally.

Lijah appealed on behalf of Ramlah; (Lijah never made any claim on her own behalf).

F. W. DOUGLAS Esq., *Commissioner of Lands* and HAJI SULONG bin AMBIA, *Undang of Rembau*:—"The land is *pesaka* and must go to the girl Ramlah. The adoption of Si-Anjong was evidently not definite but any expenses incurred by her must be paid."

*Order of Collector varied accordingly.*



**TUKANG RAHMAN v. NYAI AMPAR.***Land Case 29/1911.*

The meaning and effect of *pulang*.

By an agreement in writing dated 1901 and registered in the (now obsolete) Register of Agreements, the plaintiff conveyed an unsurveyed parcel of land to the defendant. Registration was not systematic at that date and the material document was not classified either as a sale or as a mortgage; it did not contain either the word *jual* or the word *gadai*—the operative word was *pulangkan*.

The consideration for the conveyance was an undertaking by the defendant to settle a debt of \$160 owed by the plaintiff to a third party. The land was worth about \$300.

The plaintiff contended that *pulangkan* means mortgage and he claimed the right to redeem the land.

The defendant contended that *pulangkan* means sell.

Evidence was given that *pulangkan* usually implies a gift between relations and that land is often conveyed to a near relative, for a merely nominal consideration, or for one which would be inadequate as between strangers, or on a specified condition.

H. E. PENNINGTON Esq., *Collector, Rembau*:—"The word *pulangkan* decides the case against the plaintiff as it clearly gives him no right to claim the land again. It is a complete transfer but neither a mortgage nor a sale. It is a transfer conditioned by the settlement by the transferee of a debt owed to a third party by the transferor, and the transferee carried out the condition making the transfer absolute.

The transfer was properly witnessed by the Assistant District Officer and the *lembaga*.

Defendant, who has been in possession for the last decade or more, to retain the land."

**Re HAJI NUDIN dec.***Land Case 8/1908.*

The meaning and effect of *pemberian*.

Haji Nudin died leaving land of which one lot was purchased by him and registered in his own name. At the date of purchase he had a daughter, Meriam, but his wife was dead; afterwards he married Pisah.

Pisah contended that the land was *harta pemberian*, i.e., property which the deceased before his death had given to her for the express purposes of providing maintenance for him while he lived and guaranteeing his burial expenses. Having nursed him in his last illness and paid the funeral expenses, Pisah claimed the specified lot; deceased had other land to which she made no claim.

Meriam contended that the land was *charian laki-bini* of her mother and deceased.

W. H. MACKRAY, Esq., *Collector Rembau*:—held that the land was purchased by deceased when unmarried, and that he had made it *harta pemberian*—a gift to his wife on condition of maintenance and burial, and that the condition having been fulfilled the land should be transmitted to the widow.

**Commentary.**

It was stated in evidence that *pemberian* may be a gift of land or of other property, e.g., buffaloes, and that it was very common, but this is the only case in which it has been pleaded.

The deceased had a sister but the record does not shew whether or not she survived; his brother was the *lembaga* of his tribe, but the tribe did not contest the case in any way, and having held that the land was purchased while the deceased was unmarried the Collector was bound to treat it either as *harta pembawa* of Pisah, or as *harta pemberian*, and Meriam could not succeed in either case.  
E.N.T.

**CHEMAH v. MA'ALI, MINAH and LISUT.**

*Civil Suit 95/26.*

The modern view of *balas*.

Both the wife and the *waris* of a slayer are liable for the funeral expenses of the slain but the widow and orphans are not entitled to compensation for loss of support.

The second and third defendants were the wife and mother of the first defendant.

The first defendant rashly or negligently shot and killed the husband of the plaintiff and was duly convicted under Section 304 A. of the Penal Code, and sentenced to imprisonment and fine.

The plaintiff claimed payment of the funeral expenses and feasts, and also compensation for loss of support for herself and her infant children.

It was proved by several independent witnesses that though the custom of personal substitution (*balas*) is now obsolete, yet both the wife and the family of the slayer are liable for the funeral expenses and that they ought also to render personal assistance; only the plaintiff's own *lembaga* thought there was any liability towards the infants.

E. N. TAYLOR Esq., *Magistrate, Rembau*:—"The parties are both Rembau Malays and are clearly subject to the customary law of Rembau. It is clear that according to custom the defendants are responsible for the burial expenses. The evidence accords with Parr and Mackray (at p. 71) but I am not prepared to hold, without far stronger evidence than is given here, that there is any further custom binding the family to pay additional compensation for loss of support.

In England under statute (Lord Campbell's Act) the widow would succeed on this ground and fail as to funeral expenses. The statute, however, is not in force here and under English Common Law I do not think the widow would succeed on either ground.

There is therefore no law under which compensation for loss of support can be given to this plaintiff but she is entitled to reimbursement for funeral expenses from the three defendants' jointly.

I assess the amount at \$250. \$150 has been paid already under order of a criminal court and this is to be taken into consideration, Section 341, Criminal Procedure Code 1903. There will therefore be judgment for the plaintiff against all three defendants for \$100.

As the Order of Court as to the \$150 was not obeyed till after service of summons in this suit the litigation was clearly justified and plaintiff is entitled to all her costs."

**DATO LANGSA SULEIMAN v. USUP.***Civil Suit 190/25.*

The peculiar Rembau charge considered.

[In this suit the Judge directed the Magistrate to take evidence of local custom in a case commenced before the previous Magistrate. The lengthy judgments, both at first instance and on appeal, depended on the construction of the Usurious Loans Enactment and only those portions which relate to the Custom are reported here.

Since 1928 it has been possible to draft a registrable charge providing for the chargee to occupy but of the numerous charges registered earlier, some will continue in force for many years and to these the judgment of the appellate Court will, of course apply.]

E. N. TAYLOR Esq., *Magistrate, Rembau*:—"In this suit the Dato Langsa Suleiman, who is a *lembaga*, claims damages for alleged breach of a parol contract between himself and one Usop.

On 14th August, 1923 the defendant executed a statutory charge over his land, held by E. M. R. 35 and 572 Legong Hilir, for \$634. This was registered as charge 51/23. ....

The chargee-plaintiff then instituted this suit claiming that the contract between himself and the defendant was only partly contained in the charge, and that under a concurrent oral agreement (as subsequently varied orally) he was entitled to the rents and profits of one of the charged lands. (*Note*.—The Malay word *hasil* or *hasil* in Rembau means "rents and profits" it does not mean the Government rent, as in Perak—and perhaps elsewhere too. E.N.T.) The plaintiff prayed for specific enforcement of the alleged contract, (as modified) or, in the alternative, \$450 as damages for its breach. He contended that the agreement he alleged was one which is customary among Rembau Malays.

For the defendant it was contended that evidence to vary the terms of a contract reduced to writing is inadmissible, and that if the agreement was ever made it was waived by the plaintiff.

It is clear that there is a custom in Rembau under which a borrower gives the right of enjoyment of his land to the lender reserving the right to resume possession on settling the debt. There is no interest in the sense of interest at a stipulated rate. The rents and profits do not operate as instalments of principal. The contract may be oral, or written, and if the lender requires to put himself on the mukim register the borrower gives him a charge in the form prescribed by the Land Enactment. (This is not satisfactory, but

it cannot well be avoided as the scope of registrable dealings is so narrow.)

The plaintiff says that they contracted according to the custom; the defendant says the contract was a special one; there is no very satisfactory evidence, and I do not think any more can be obtained. After carefully considering all the evidence recorded, and bearing in mind the definition of "proved" in the Evidence Ordinance: I find:—

- (a) that the parties originally contracted according to the custom;
  - (b) that they subsequently, by consent, varied the contract, but within the custom.
- and (c) that the chargor-defendant later re-entered into the rents and profits of the (remaining) lot of land in breach of the contract.

What I mean by finding (b) is this. In the first place the defendant gave plaintiff the enjoyment of both lots as security. Later, (the price of rubber having risen) he re-entered into enjoyment of one lot with the plaintiff's consent leaving the plaintiff the other one, and this did not create a special contract outside the custom because the custom recognises a half-crop-security (even in a single lot)—*vide* the evidence of Suboh:—

"It is the custom of Rembau for the chargee of land to enjoy the rents and profits, if both chargee and chargor are Malays. There is no interest. The chargee sells the produce from time to time until he has recovered his principal from the chargor. The produce is his profit. On repayment in full he must discharge the charge.

If a Malay charges his land to a chetty the custom does not apply, because the chetty charges interest and the chargor remains in occupation of his land.

The custom is the same for rice and rubber land. The chargee should draw the coupons.

It is true that the details may be varied by agreement in the case of *padi*, *e.g.*, the chargor may stipulate for half the crop only, but the principle is the same."

Firstly, in its relation to the principle of Registration, it must be remembered that the Custom is older than the mukim registers, which themselves are older than any of the rubber in Rembau. In the days before registration of title occupation was the chief evidence of title, so the presence of a new party in any land would be evidence of the creation of a new interest, and if it continued long enough it would no doubt establish absolute ownership. A contract of the class now under consideration would have to be made before witnesses.

With the advent of registration it became necessary for the lender to put himself on the register, unless he was prepared to take the risk of the borrower selling or charging the land, over his head to a stranger. Only two instruments were available—a transfer and a charge (leases not becoming registrable until 1920 over mukim register land) and naturally the latter was chosen. The charge however does not contain the contract, it is merely one incident in the contract, and Section 91, Evidence Ordinance has no application (as Dinsmore J. has, in substance, held in directing evidence of custom to be taken in this case). The case is broadly analogous to that of *Haji Abdul Latib v. Mohamed Hassan*, (I. F.M.S. Rep. p. 296) in that the contract between the parties is good as a contract, their actual dealings with the land itself being in accordance with the appropriate law of registration of title. There is however an important distinction now between rice land and rubber land. A chargee cannot properly draw coupons so in future cases the lender ought to take a lease instead of a charge, registered lessees being legally entitled to the coupons. The true contract between the parties, however, is not a lease, nor a charge, nor yet a mortgage. It is a contract for which no short name can readily be found. It does not appear to have a Malay name but the phrase *gadaai makan hasil* describes it and is understood. Essentially it is a loan of a fixed sum, for a fixed term, without determined interest, coupled with a peculiar arrangement under which the lender receives remuneration and security.

In its application to wet rice land it is probably a reasonable custom because there, if the lender desires to preserve his security, he must maintain the land in an irrigable state, and unless he does a substantial amount of actual work it will yield nothing; rice being an annual crop, rice land has a low capital value. I do not mean to say that every "customary-loan-contract" is necessarily fair if the land concerned is *sawah*—each case must be examined on its merits—but the point ought to be mentioned because, as Mr. Reid has said already, this case is of public importance to the Rembau District.

In its application to rubber land however the custom is liable to operate most inequitably for two reasons—the price fluctuates widely, sometimes wildly, and (mature) rubber land has a very high capital value as compared with rice land and produces a very large income in relation to the amount of work necessary for maintenance and harvesting."

The following is extracted from the judgment in appeal, ACTON, J.:—"Now as to the alleged custom. There have been many references to custom in this case without it being clearly stated exactly what was meant. So far as I can see it was not intended

to refer to any rule which, by long usage, has obtained in the district the force of law but merely to the fact that agreements similar to the one relied on by the plaintiff are commonly entered into in the district in the cases of charges both over *padi* and rubber lands. The agreement is that no interest shall be payable under the charge but the chargee shall take the rents and profits of the land until the principal is repaid. Presumably the chargee must upkeep the land in a proper manner and I gather from the evidence that the chargor has the right to repay the principal sum at any time without waiting for the due date while the chargee cannot apply for sale of the land until the due date. I know of nothing to prevent the owner of rubber land, when he charges the same, from making an agreement of this sort if he thinks fit to do so and on the evidence I find that such an agreement was come to between plaintiff and defendant, modified almost immediately by plaintiff agreeing to take the rents and profits of one of the pieces of land only instead of both."

### Commentary.

Apparently the learned judge did not regard the custom in question as part of the general body of the Custom of Rembau.

Whatever may have been meant by the word "custom" when used by counsel in arguing the appeal, there is no doubt that in the evidence of the witnesses "custom" was a translation of *adat* and that the Rembau Malays do regard this customary transaction as part of the general body of their customary law. Whether they are right in so regarding it is another question—it does not appear to be related to any matriarchal or tribal principle, except that the tribe have an option to accept or redeem the charge.

The point of this report, however, is that the substance of the transaction is explained and that the Judge clearly held it to be good—rejecting the narrow and technical arguments by which it was assailed. E.N.T.



**JAIBAH v. RAMPAL.***Civil Suit 63/26.*

In the case of a charge accompanied by an agreement for the chargee to occupy the charged land (*gadai makan hasil*), the chargor has a right to pay off the charge before expiration of the term and to resume possession of the land, but the chargee may be entitled to compensation.

In 1925 the plaintiff charged her *sawah* land to the defendant for \$150, without interest, to be repaid three years after date; the charge was in the statutory form and was duly registered; the defendant entered into occupation of half the land, the plaintiff continuing to enjoy the other half. About a year later the plaintiff desired to repay the loan and re-enter on the defendant's half but the defendant refused to accept payment and discharge the charge.

The plaintiff sued for an order directing the defendant to discharge the charge on payment of the amount found to be due.

The evidence of custom given in *Suleiman v. Usop* (p. ) was repeated and amplified and it was shewn that even though a *gadai makan hasil* contract is for a stipulated term the borrower has an option to repay the loan and resume possession, at any time if the land is under rubber and subject to the lender's right to the current crop if it is *sawah*. The borrower, however, must compensate the lender for any special expenses which the latter may have incurred in connection with irrigation.

It was shewn that the defendant had repaired the irrigation channel at a cost of \$10 and prepared the nursery but she had not begun cultivation for the new season.

E. N. TAYLOR, Esq., *Magistrate, Rembau*:—"It is clear that the plaintiff is entitled to the order prayed for but I think the defendant is entitled to some compensation for the loss of her bargain as she is being turned out of a rice field which she had expected to cultivate for two more years. The chargor, however, claimed to re-enter in the early part of June so reasonable notice was given.

I give judgment for the plaintiff for the order prayed for, subject to the payment of \$25 compensation, but the plaintiff is entitled to her costs because the defendant wrongfully refused a discharge. So allowing \$10 for costs there will be a decree for a discharge of charge 80/25 on payment of \$165."

The money was paid into Court immediately and the defendant granted the discharge which was executed forthwith and attested by the trial Magistrate.



**Commentary.**

The judgment is not altogether satisfactory. If the chargor has a right to redeem she cannot be liable to pay compensation on exercising that right; she must pay compensation for improvements but she is not liable to pay compensation for disturbance. It appears therefore that the amount awarded in this case was excessive. E.N.T.

**NORISAH v. MIUT.***Land Case 67/26.*

The meaning of *chagar*.

The point at issue in this case was whether a sale had been wrongly registered; the defence alleged that the transaction was one of *chagar* and it therefore became necessary to decide what *chagar* meant.

In the statutory report to the Commissioner of Lands

E. N. TAYLOR Esq., *Collector, Rembau*:—"I have made careful enquiry as to the usage of the word *chagar* for which Wilkinson gives three meanings, *viz*:—

- (1) trust,
- (2) security,
- (3) a form of mortgage in which the lender has usufruct in lieu of interest.

In Rembau the use of the word is limited to "security" but it means security generally not any particular form of contract, and not necessarily in connection with land.

Rembau Malays frequently make "mortgages" of the kind referred to and I have enquired at great length into several disputes arising out of them but the word *chagar* is never used to describe that type of transaction."

## GLOSSARY.

The inherent difficulty of administering Malay customary law in conjunction with the Torrens Law and a system of formal legislation enacted in English is accentuated by the fact that many words, both English and Malay, are used in false or ambiguous senses. The commoner of these are explained in the following notes, some of which may seem rather elementary, but no apology is offered on that account since perusal of the cases shews that even European Collectors have sometimes fallen into the same error as the *rayat* and have recorded in their Notes of Evidence, *e.g.*, that some one had obtained letters of administration when that was not the fact, (see *kuasa*, at page 271). Appalling confusion results from mistakes of this type when copies of the evidence are used by officers accustomed to attach the proper meanings to technical terms.

A few rare or local Malay words which are not found in the smaller dictionaries and some ordinary Malay words which have a technical meaning in relation to the custom, have also been included; some of these do not occur in the text but all are current among Rembau witnesses in the class of litigation with which this work is concerned.

For convenience of reference the whole have been arranged alphabetically.

- adat* customary law; the matriarchal law regarded as a system.  
The word is not used in Rembau in the narrower sense of a particular custom relating to one class of transactions. It is a wider term than any one English word, and includes the ideas of law, custom and tradition.
- anak buah* I. (of a *Penghulu*) the people resident in his territorial jurisdiction.  
II. (of a tribal chief) the members of the tribe or section of a tribe, who are subject to him, wherever resident.  
III. (of a private person of either sex) nieces, nephews, grand-nieces and nephews, and cousins of a younger generation,—all, of course, related through the mother.
- balas* restitution (see p. 49).
- bela'h* (a variant of *bela*) to cherish, especially to nurse during last illness.
- bulat* unanimous, especially of a resolution of *lembagas* deciding a point of custom; all the *lembagas* must be present, and in full agreement, to pass a true *bulat*.

- "caveat" is occasionally used by Malays ignorant of English to signify an attachment or any process of a similar nature—see also *tahan*.
- chagar* security generally, not necessarily land; *chagarkan*, to hypothecate; *chagaran sawah*, an informal charge of rice land; (see further *Norisah v. Miut*, p. 267).
- charian* acquired property, earnings.
- charian bujang* property acquired by an unmarried person of either sex.
- charian janda* property acquired by a divorcée or widow (this is rare—*charian bujang* is the usual expression).
- charian laki-bini* the jointly acquired property of a married pair.
- chenderong mata* literally, "the descent of the blade"—not eye in a context of weapons. This expression, now very rare, signifies a peculiar rule for the devolution of weapons; its meaning is uncertain; (see further *Re Kulop Kidul dec.*, at p. 93).
- cherai* dissolution of marriage; *cherai hidup*—divorce; *cherai mati*—death of either spouse; the distinction is of cardinal importation because the rules for the distribution of property in the two cases are different.
- "Customary Land" Much confusion has been caused by the use of this expression in different senses; some people say "customary land" when they mean ancestral as opposed to acquired. There is a full discussion of the matter in official correspondence N. S. 1998/27, D. O. R. 795/27. The term has been defined by the legislature, but not successfully and it is proposed to repeal the present definition.
- dapatan* see *harta*.
- dusun* an "orchard" not cleared or continuously cultivated—a holding of jungle containing durian and occasionally other fruit trees.
- gadai* to pledge, or hypothecate—to deposit a title as security for a loan; *gadai yang di-register kan*, a true charge. Malays, however, are apt

- to confuse bringing an instrument for cancellation of stamps with bringing it for registration, and they may say they have registered a charge when the real transaction is something entirely different.
- gadai-makan-hasil* an expression for the peculiar local transaction in which the chargee of land enjoys the rents and profits in lieu of receiving interest; (see further *Suleiman v. Usop*, p. 261).
- ganti tikar* marriage with a deceased wife's sister; (see also p.p. 8, 29).
- giliran* see *pesaka*.
- grant* usually, an Extract from the Mukim Register; *grant kechil*, *idem*; *grant besar*, a Grant or Certificate of Title.
- harta* property; *harta dapatan* the separate estate of a married woman; *harta pembawa*, the personal estate of a married man; *harta terbawa*, the children's share of their parents' *charian laki-bini* when held in trust for them by their father after the death of their mother.
- hasil* rents and profits of land; (it does not mean the Government rent, as in other parts of the country; the local word for rent is *chukai*).
- hasil mentara hidup* the life interest in ancestral land sometimes granted to near male relatives when there is no direct heiress.
- hutang tumbok* literally "a debt which sprung up"—a debt incurred through inevitable misfortune, and therefore a sufficient reason for the sale or charging of entailed land.
- jeput* a corruption of *jemput*; to invite in the technical sense, e.g. to invite a widower to return to his own tribe; (see also p. 27).
- jinjang* a unit of irrigated rice land, a row of *lopak*, generally at right angles to the direction of the stream, enclosed between two main bunds and extending from the feeder channel (*tali ayer*) to the outlet stream; one or two *jinjang* may be fed from a single intake.

- kadim* an idiomatic word, hardly susceptible of precise definition; it implies the two ideas of relationship and right to inherit; probably *kadim* is best translated as "nearest of kin, in the matriarchal line of descent, and not more remote than *sanak nenek*"; *waris yang kadim*, however, appears to mean "the nearest living relatives in the tribe," and where there are no *sanak nenek* may include more remote relatives provided that they can definitely trace descent from a common ancestress.
- kadimkan* to adopt with ceremony so as to make the person adopted a member of the adopting family; this term is applicable either to full or limited adoption of a stranger but not to any adoption of a person who is already related.
- kampong* I. a cluster of inhabited holdings.  
II. a single holding of *darat* or "high" land wholly or partly planted with coconut and fruit trees, and therefore an actual or potential house site—contrasted on the one hand with swamp or irrigated land, and on the other with *ladang* (*q.v.*)
- Kathi* a salaried religious official appointed by the Ruler of the State in Council. His main duties are to superintend religious instruction and the management of mosques, and after due enquiry (for which he has judicial powers) to grant certificates of Muhammadan marriage and divorce. His jurisdiction is territorial, corresponding to the administrative district.
- kawan* mate; husband or wife; the other one of a pair, (*e.g.*, of shoes) rarely used in Rembau in any other sense, but *kawan-kawan* means "friends."
- kawasan* an area appropriated to a particular person or purpose; *kawasan sahaya*, my compound; *kawasan Melayu*, a Malay Reservation.
- kepan* or *kapan* literally "shroud"—property allocated to guarantee funeral expenses and feasts for the holder. (see p. 11).
- kuasa* a generic term for instruments conferring or delegating power, *e.g.*  
(i) a *Kathi's* or *Penghulu's* Commission,  
(ii) a power of attorney,  
(iii) letters of administration.

It is notorious that the Malays have never understood the difference between an heir and an administrator; they frequently say that a person *sudah ambil kuasa* when he has done any one of seven entirely distinct things, *viz*:—

- (a) applied to the Collector for an order transmitting land *inter vivos*;
- (b) obtained such order;
- (c) applied to the Collector for an order for the immediate transmission or distribution of the property of a deceased;
- (d) obtained such an order;
- (e) applied for letters of administration;
- (f) obtained a grant of administration;
- (g) obtained leave to transfer from himself as administrator to himself as proprietor.

The distinction between (f) and (g) is entirely foreign to Malay ideas; obtaining *kuasa* is regarded as equivalent to obtaining the property and in many cases the administrator remains on the register, merely as such, for the rest of his life, though he live another twenty years; he rarely takes the final step unless it is desired to sell the land, in which case the law of registration compels him to obtain an Order of Court, but even then he never understands the point, and probably regards it merely as a device of the Government to obtain extra fees.

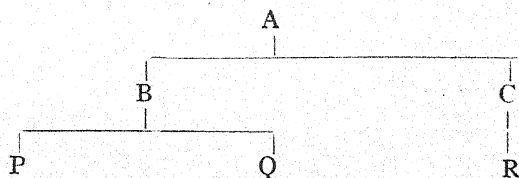
Properly, the words *sudah ambil kuasa* could only express case (f) but their misuse has become so general that it is always necessary to put questions until the true position is discovered. In one official translation the words *sudah ambil kuasa*, occurring in an obvious context of succession on death, were rendered "he fetched the power-of-attorney."

The legislature has lately recognised the difficulty and the new and original provision for immediate distribution of Small Estates may do something to reduce the confusion.

*ladang* literally "clearing"—land once cleared and planted with commercial products, usually rubber. (A Rembau Malay often calls rubber land *ladang*, even though the trees are aged and the actual clearing was done by his predecessor in title; he very rarely builds a house in such land.)

*lembaga* a tribal chief; some of the tribes are subdivided, and there are twenty *lembagas* for twelve tribes, but no *lembaga* is subordinate to any other; the *lembaga* is the highest authority in the tribe and subordinate only to the *Undang*.

- lopak* a "square" of *sawah*—the smallest unit of irrigated land.
- mas kawin* the sum paid by the bridegroom to the bride's family. It is really a customary tribal payment derived from the "marriage by purchase" of primitive times, but modern practice and local legislation both confuse it with the dowry of Muhammadan Law (*mahr*) which is a payment of a totally different nature.
- nikah ta'alik* marriage with a saving clause (see p. 19).
- pampas* damages, compensation, *e.g.*, for *padi* eaten by cattle—contrast *upah* which means remuneration for work done.
- pembawa* see *harta*.
- pemberian* literally "gift"—a conveyance in consideration of a guarantee by the transferee to provide maintenance and, or, funeral feasts for the transferor; (see *Re Haji Nudin dec.*, p. 259 & p. 48).
- perut* (i) An exogamic division of a tribe, *i.e.*, a division descended from a distinct original ancestress;
- (ii) A division of a family, on the same principle—*e.g.*, if a woman have three grand-daughters of whom only two are sisters, thus:—



there are two *perut* in the family. P, Q and R are all of the same *perut* in the tribe, but within their own family P and Q are of one *perut* and R is the sole representative of the other. If R dies without leaving a daughter that *perut* is extinguished, and two fresh *perut* originate from P and Q.



*Penghulu*

a territorial headman. In Rembau, until very recently, the only territorial chief was the *Undang* and all minor chiefs were tribal; consequently the *Undang* was usually called the *Dato Penghulu* and was so described in official documents; there were no *penghulus* of *mukims*; (*mukim*="parish"). In 1926 reorganisation was commenced, and the State Council gradually appointed official *Penghulus*, to all *mukims*; their jurisdiction is territorial, not tribal, and includes all races resident in their respective areas. The term *Dato Penghulu* is now obsolescent.

*pesaka*

is not a local or technical word, but is plain Malay for "inheritance" and is so used throughout the Peninsula, irrespective of the system of law under which the inheritance takes place.

In Rembau, however, inherited land is entailed, and is subject to customary limitations on dealing, but unfortunately there are no separate words to express these ideas; consequently though the word *pesaka* actually means "inheritance," to the Malay mind in Rembau it implies also the distinct ideas of entail and customary limitations, and is therefore an ambiguous term.

*pesaka giliran*

the hereditary chieftainships which devolve on certain families in rotation.

*pesan*

to give oral information otherwise than by conveying an express message received from the originator—to communicate hearsay, e.g. A tells B to go and tell C something. B fails to find C and tells Z; later Z repeats, *pesan*, the information to C.

*"postpone"*

is occasionally used correctly by Malays ignorant of English, but usually *minta postpone* means "I wish to give notice of appeal."

*pulang*

to convey by way of gift or conditionally, but without any right of redemption; see further *Tukang Rahman v. Nyai Ampar*, (p. 258).

*sanak* The terms used to denote relationships in Rembau require careful study, because important issues often depend on the degree of relationship, and these have sometimes been

misunderstood; the matter is frequently rendered still more difficult because illiterate witnesses are apt to mis-state their case, even when they have no intent to deceive.

The true Rembau meanings are as follows:—

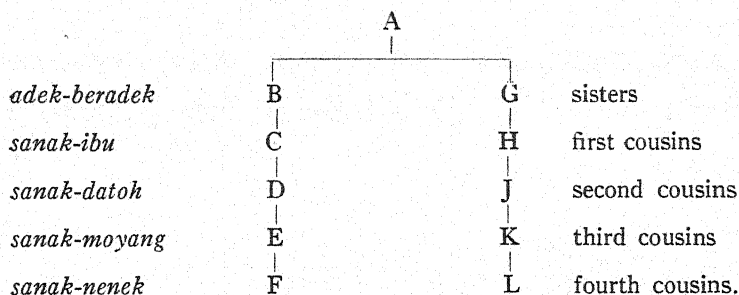
<i>ibu</i> or <i>mak</i>	-	mother
<i>indok</i>	-	aunt
<i>wan</i>	-	grandmother
<i>datoh</i>	-	grandmother (seldom grandfather)
<i>moyang</i>	-	great-grandmother
<i>nenek</i>	-	great-great-grandmother
<i>nenek-moyang</i>	-	remote ancestresses

*moyang* and *nenek* are particularly to be noted because they are invariably used in Rembau with the meanings given, and this differs from the usage in other parts of the country.

*ibu bapa*, sometimes corrupted to *buapa*, does not mean "parents" but is a technical expression for the elders of the tribe; (as to this see Parr and Mackray at p. 36.)

*sanak* is a word of doubtful origin meaning "related"; it may be derived from *anak* by contraction of *sa-anak*.

*sanak* is scarcely ever used alone, but is commonly followed by another word indicating the degree of relationship; the second word specifies the respective ancestresses who were sisters thus:—



The *adat* does not recognise any degree of relationship more remote than *sanak-nenek*; a person not within that degree is merely *sa-waris*, i.e., of the same tribe, or perhaps *satu perut*.

It is often difficult to discover the truth, because a witness may so slur his words as to render *saudara sa-moyang* (a rare expression) indistinguishable from *saudara sanak-moyang*. *Saudara sa-moyang* ought to mean "one great grandmother in common" = *sanak-datoh*, which is one degree removed from *sanak-moyang*.

It is best to rely as far as possible on the strict use of *sanak*, that is the form most generally understood. *Satu wan* however is a common variant for *sanak-ibu*. (There is no expression *sanak-wan*)

Even those Malays however who understand these technicalities sometimes misuse the terms or use them loosely. For example D and J in the table are *sanak datoh* to one another, but D may say that K is her *sanak moyang*; this is wrong; only E and K are *sanak moyang*. K is *anak sanak datoh* to D or (looking at it from K's point of view) D is *mak sanak datoh* or *indok sanak datoh* to K.

These distinctions are beyond the comprehension of many of those most concerned. The only safe method is to start from the witness herself, and ask for the name of her mother, and then the latter's mother and so on, till a table is constructed from which the Collector himself can determine the relationship. The process is slow but indispensable, for where it has been omitted in the past, the Resident has had to do it on appeal for which reason some years ago Collectors were instructed to construct such a table in every case; this rule has lately been reaffirmed.

<i>sawah</i>	irrigated rice land
<i>semenda</i>	the transference of a man to his wife's tribe and family on marriage; <i>orang semenda</i> , a married man; <i>tempat semenda</i> , the wife's relations.
<i>suku</i>	a tribe.
<i>tahan</i>	It is very common for a Rembau Malay to complain that some one <i>sudah tahan</i> her land; the trouble may be a caveat, a notice by chargee requiring payment, a notice by a chargee to show cause against sale, an attachment, an actual order of sale in execution of a decree or in enforcement of a charge, a mere retention of the title as security, an objection to an application of any kind or an objection to a proposed transaction affecting ancestral land. It is often very difficult to ascertain which of all these types of <i>tahan</i> is referred to, especially in the last two cases where there may not be any document in existence.
<i>talak</i>	the formal word of divorce pronounced by a husband; (see p. 18).
<i>tebus</i>	to redeem property hypothecated, to settle a debt, to conclude a negotiation or judicial proceeding: (as to <i>tanah tebus</i> see p. 36).
<i>tebus talak</i>	divorce by redemption—the wife buys back her freedom. (see p. 19).

- tentukan* to settle on children, an ascertained share of their parents' *charian laki-bini* (of a divorced man or widower).
- terbawa* see *harta*.
- Undang* "Law giver"—the Ruling Chief of Rembau, also called the *Dato Penghulu*; *undang-undang*, written laws.
- waris* (i) the nearest female relatives on the mother's side, but sometimes used loosely to include male relatives; in any event the meaning is strictly limited to relatives in the tribe. (In this book the word is used only in the strict sense of the nearest female relatives);
- (ii) those families to which a tribal office is limited;
- (iii) the suku Biduanda, *i.e.*, the tribe descended from the aboriginal wives of the earliest Malay settlers.
- Explanation*:—*waris* is plain Malay for "heirs" and these three distinct meanings of the word in Rembau are all applications of the same basic idea, *viz.*, (i) the heirs of an individual person, (ii) the heirs to a title and (iii) the heirs of the soil of Rembau.
- The immediate heir of a woman is, of course, her daughter but a Rembau Malay would seldom describe a daughter as *waris*. The *waris* of an individual are, in order of nearness:—
- I. (a) the mother  
(b) sisters and nieces;
  - II. (a) the grandmother  
(b) aunts and first cousins;
  - III. (a) the great grandmother  
(b) second cousins,
- and so on, the relationship being traced, of course, exclusively through the females.
- waris jantan* The family of the man,—as opposed to *waris perempuan*, the family of the wife—it does not mean "male relatives."
- sa-waris* of the same tribe—implying, "not otherwise related."

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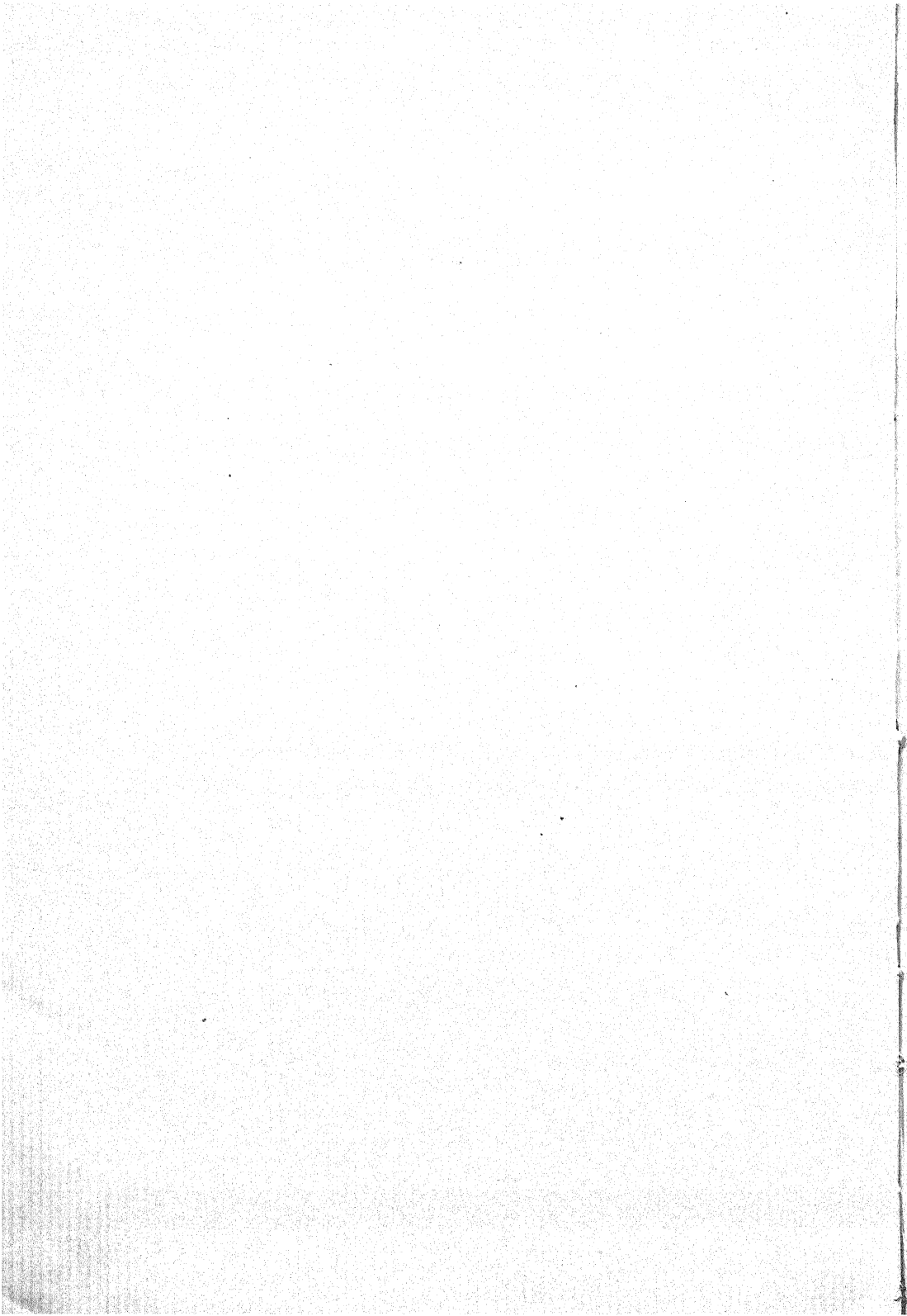
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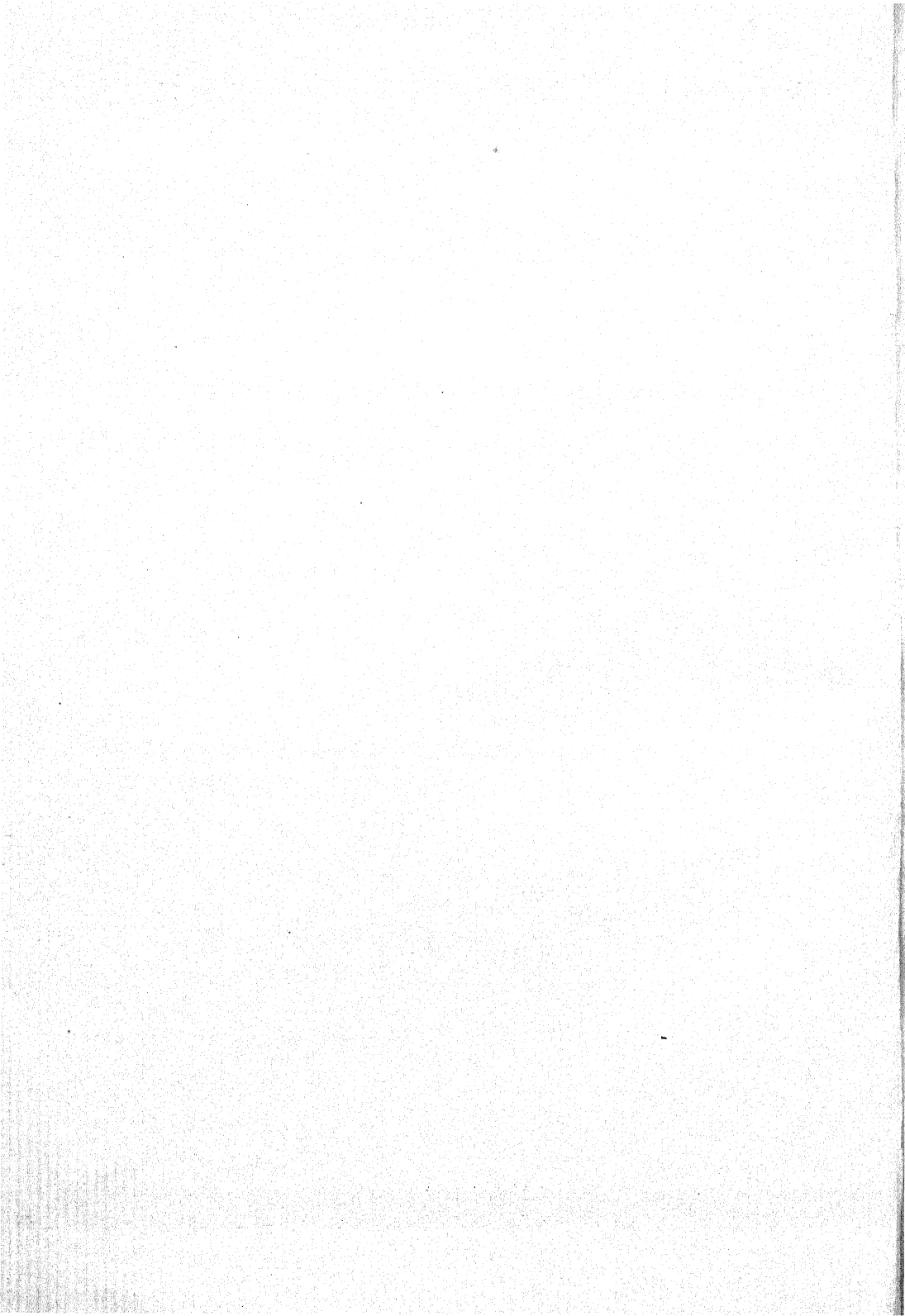
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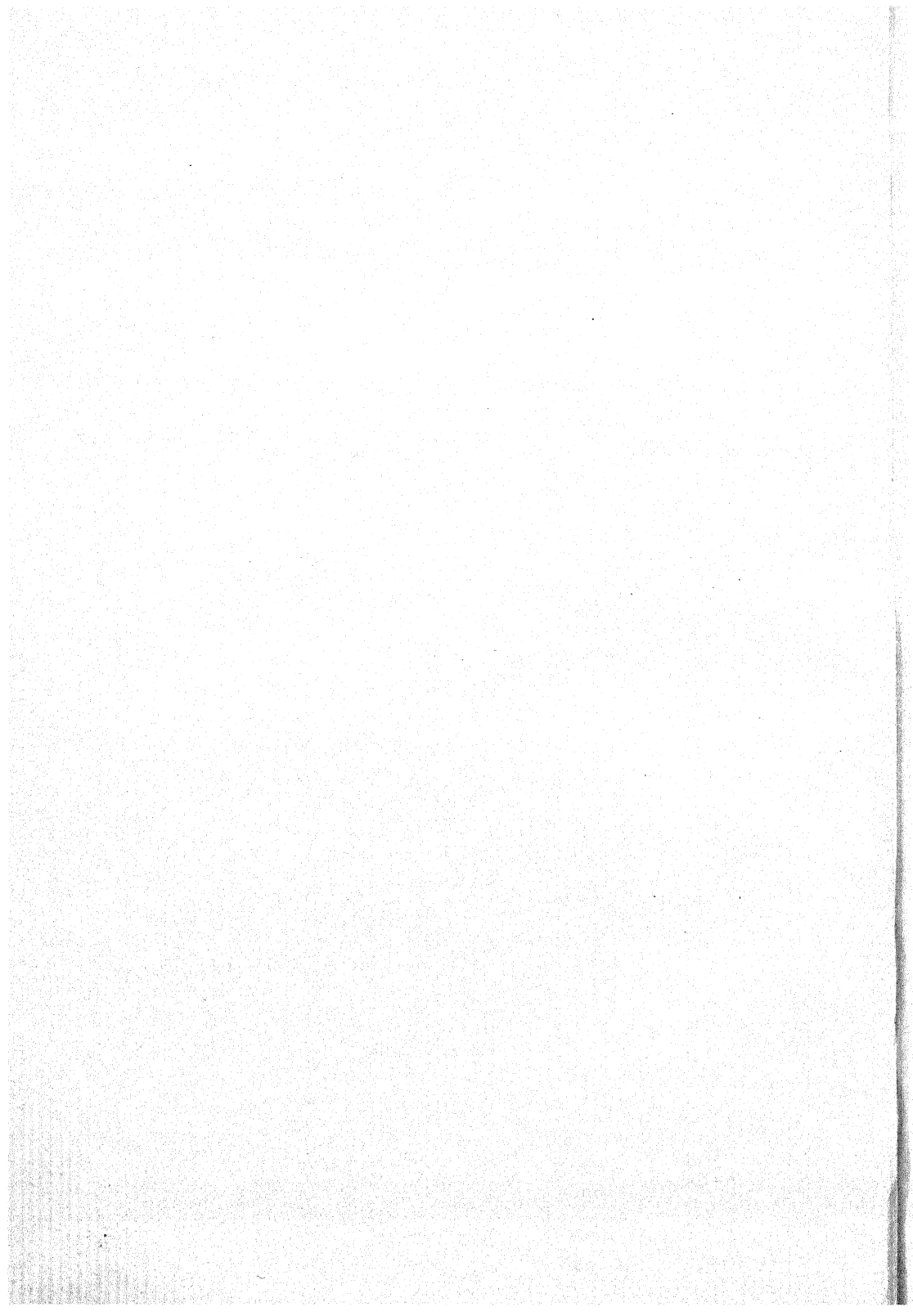
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## Some Notes on Murut Basket Work and Patterns.

By G. E. WOOLLEY.

(With 18 text-figures and 3 Plates.)

The making of hats, mats and baskets is perhaps the best example of Native "Arts and Crafts" amongst the aboriginal inhabitants of the Interior of British North Borneo. The needs of these people are still few, and their wants easily supplied. For clothing, there is bark cloth, which is still in common use: the weaving of cloth from a native cotton or other fibre is generally known but not very widely practised, especially amongst Muruts, where it is now rarely seen: the best weapons are imported or made by foreign craftsmen, Kayans, Dyaks, Bruneis, etc.: the brassware and gongs are also derived from Brunei or similar sources: local men only turn out the roughest material or ornaments of plain wire: the large earthenware jars, often highly valued, are of Chinese origin. Mats, however, are wanted for all sorts of purposes, and in their manufacture a considerable degree of skill has been attained.

This paper only attempts to show some types of articles produced, with patterns employed by Muruts of the Tenom, Keningau and Pensiangan areas, and a few from the upper waters of the Padas, which lie in the Sipitang District, and adjoin Dutch territory on the South East and Sarawak (the upper waters of the Lawas and Trusan rivers) on the South West.

It is not easy, and as intercourse increases it becomes less so, to draw a hard and fast line between Murut and Dusun or Murut and Dyak. The Kwijaus of Keningau, for instance, and the tribes of the 'ulu' Sook and 'ulu' Kinabatangan show affinities with both Murut and Dusun. It cannot therefore be said that all the patterns shown here are exclusively or originally Murut: some may have been borrowed from Dusuns or Dyaks or, *vice versa*, other tribes may have copied Murut patterns. The 'crab' pattern (figs. 1 and 2) I am told was introduced by some Dyaks, but as there is another name as well for this pattern, and it is a fairly common one, my informant may be mistaken.

Weaving is essentially a woman's occupation, and if questions are asked as to patterns, their names and meanings, a man will almost always plead ignorance and turn to a woman for explanation. Even then there appears to be some doubt, and different explanations may be given: certainly in many cases the meaning of the design is lost or unknown: it is now merely a pattern known by a definite name which has been handed down by tradition with instructions as to the details of the making. Some patterns are rare and only known in some parts, but it does not appear that any villages had special patterns by which their work could be identified, as was



formerly the case with tatu designs amongst Dyaks. It will also be found that a pattern may have different names in different places

Types are more localised: *e.g.*, the hexagonal hat is Peluan, the conical hat with an "all over" pattern in red and white and 8 ribs or stiffening rotan strips is Timogan (Tenom), the 'all over' in black and white with 4 or 8 ribs is from Keningau.

The principal articles of manufacture are (1) mats, ordinary floor mats, sleeping mats, and the rough mats used for drying padi, etc., (2) baskets, (3) hats, (4) a few miscellaneous articles such as winnowing trays, small receptacles, etc. In Pensiangan District small mats, measuring 1' x 2' or less are used as decorations. One or two may be fastened round the posts or beams in the public central part of the house, or are fastened up on the walls as we should put up a few pictures. This is usually done on the occasion of a feast, and the mats are left up afterwards.

Materials used are rotan (rattan) especially for the better quality mats; bamboo, especially for hats: bemban, locally called "Lias", (*Clinogyne grandis*) for hats and mats. One hat from Pensiangan, appears to be made of 'kajang', the leaf of the pandanus or mengkuang or a similar plant.

Rotan is more difficult to prepare, but it is stronger and there is a fine glaze on the hard outer skin: the red and black dyes take well on it and give a good polished surface. The bemban stems provide four different quality strands: the stem is peeled in strips, and each strip is then cut into four layers, the smooth outer surface being the best. The first and second layers are used for hats, etc., the third and fourth for the inner lining of hats or for coarser and rougher mats. The bamboo used is one of the small varieties which has long internodal distances: it is cut in the same way as bemban.

Colours employed are black, red, yellow, and a sort of purple. Black and white is the usual combination, the white being the original yellowish tinge of the rotan or bemban. Red is employed sometimes for a definite purpose in a design, but often a few coloured strands are put in in place of black or white merely for the sake of colour: this of course gives a diagonal or check line, but no regularity is required in the width of such lines or in the intervals between them: in fact, irregularity is more frequent. Plain white is very common in the case of mats and small baskets, and the pattern then is generally hard to distinguish until the mat is viewed obliquely, when the light effect brings out the pattern, as in a damask tablecloth or napkin. Yellow is rare, and when it occurs it is usually in a hat, in single strands, to give a brightening up effect, or as a binding for the ribs or stiffening bars of a hat. It is a natural yellow, from a different plant, not a dyed strip of rotan. Purple or indigo is seen in some 'white' ulu Padas mats to give a few narrow lines of colour.

In a mat, the strands run at right angles to each other, but generally diagonally across the mat: I have not seen any in which

the strands cross each other at any other angle. The same rule as to right-angled plaiting generally applies to hats and baskets. The pattern is obtained by variations of crossings, e.g., a strand runs over one, under three, over two, under one, over three, etc. 'Over six' seems about the largest 'jump' without a 'one under' to keep the strand in place. A result of this is that all broad bands of pattern or expanses of 'background' are given a speckled appearance when as is usual in black and white work all black strands run one way and all white the opposite. The exception is the 'senampang' square check pattern, where each set of strands is in bands of alternate black and white: this gives squares of all black, all white, and speckled. Sometimes the 'senampang' check is combined with an ordinary pattern worked irrespective of colour.

A different method is used in some sitting mats, 'tabir', this is made of all black rotan, with a white strand superimposed on a black one, so that there is a double thickness in all white or speckled portions: the ends of the white strands are trimmed off neatly at the edges of the figure required, and the plaiting itself keeps them from shifting. These sitting mats are sometimes made by men, and on one occasion when I enquired why the price asked was four or five times that of a small basket, I was told by the owner that it was because he had made it himself, and it was not a woman's work. 'Equality of the sexes' and 'Equal pay for equal work' are theories not yet known in Murut circles.

In the plain white patterns, as already noted, an oblique light is required if the pattern is to be seen clearly, but when the material is bemban or bamboo it will often be found that the cross strands are of a different grade from the 'upright' ones, and the consequent difference in grain helps to emphasise the pattern. This is particularly the case if one set is composed of the outer skin, which has a natural polish and a somewhat more greenish tinge than the inner layers.

Hats generally have an inner lining of rougher and coarser plait: this helps to stiffen them as well as giving a better protection against the weather.

The Pensiangan hat made of kajang is a common type amongst the Sakai of Bulongan in the Dutch territory across the border. These Sakai are nominally Islam, and seem to be half way between Muruts and the coastal tribes of Sulu or Bugis blood.

The ulu Padas hat is made of concentric rings of round rotan 'threads', not flat strips, with an inner lining of leaf, all stitched together with a native thread and then painted.

The manner in which some patterns are adapted to fit a given space should be noted: lines, instead of being cut off abruptly at the edges, are curved round to meet each other. Examples are given in figs. 3, 4, 5 and 6. This is especially the case with the 'Nomboyunan' (B 45) and 'split pinang' (6) or 'lansat' patterns.

The former can be carried on indefinitely or fitted in to a panel shape or even into a small square.

Baskets have a variety of patterns and the maker, anxious to display her knowledge, often breaks off into another pattern before the first one is completed. In the case of large mats, such a combination of patterns is common.

Both mats and baskets generally have border patterns in addition to the main pattern. These borders are plain or straight lines or narrow strip patterns, and there are sometimes, on a large mat, as many as two dozen of them, so that the 'border' takes up quite a considerable proportion of the whole. Examples of these are given in figs. 7—13.

Enquiries as to the meaning of names, as has been noted already, were often fruitless, but the following stories were given to explain the origins of some of them:—

*Negimpong*.—The "Quarrel" pattern, fig. 14. 'Negimpong' means 'dislike' or 'disagree with.' Once upon a time a boy and girl had been betrothed in their childhood, but when they grew up and the time came for them to marry, the girl found that she did not love the man, and the idea of marriage was altogether distasteful to her. She shrank, however, from telling this plainly to her prospective father-in-law or to her fiancé, for she was a nice girl, well brought up, and knew 'adat' (custom). For a long time she pondered, and at last decided to weave a pattern which would give them a hint. So she made a 'boyong' (basket) with this pattern on it, which she invented, and sent it to her father-in-law-to-be. He did not know why it had been sent, the pattern was new to him, and he could not read its message. He showed it to his wife and asked her opinion on it: she considered it and said "I think it means that she will not live with our son, but let us send it back to her and see if it is returned to us." So they sent it back, and soon the girl returned it to them. Again they sent it back, and for the third time it came again to them, so now they knew that the basket had its message, and that the girl would not marry their son, but was prepared to return the "brian" (dowry) that she had received.

The interpretation of the pattern is this:—the two curved lines or hooks are two persons, the man and the girl: the hooks are back to back to show that the two could not face each other, *i.e.*, a reconciliation was impossible, but there was a 'road' (the line of the pattern) which eventually led to a place where the pattern was broken up into small odd shaped patches: these small bits were the various articles of brian, gongs, jars, beads, etc., and the meaning was 'though we cannot meet ourselves, yet there is a path which will take you back to your 'brian' which you may recover.'

The above story was told with reference to an old basket which one of the narrator's people had with her. I ordered a similar one to be made for me, but have not received it yet. Unfortunately, I

did not make a sketch of the whole design on the spot. Other specimens called 'Negimpong' obtained later, do not show a 'broken up' section of pattern. Possibly this only occurred in the first one I saw because the circumference of the basket did not allow room for the pattern to be fully completed.

Other variations of the story, heard in other villages, are:—

(a) A girl did not like (negimpong) her husband, and so after many quarrels the man agreed to grant her a divorce if she could make a copy of a basket which he showed her, the basket had this pattern.

(b) A man once told his wife that he was intending to visit his relations in a distant village, and that he would take her with him: she was to make a basket, inventing a good new pattern for it, to take with them as a sample of her skill. The woman designed and made a basket of this pattern, but the man did not like it, and abused her for her want of skill, and said he would not go on the visit, or would not take her, if she could do no better. The woman was so ashamed and angry that she divorced her husband, and the pattern was thereafter called "Negimpong" (Negimpangan).

*Namboyunan*, the 'mad' pattern, fig. 3, 4, 5 (antea).—(a) The name was given because the woman who invented the pattern went mad.

(b) It represents the track of a woman who was lost in the jungle and wandered about till she went mad. The continuous black line is the track: it goes round and round and has no end: The isolated figures, diamond, pear, and kidney shaped, are different sorts of steep or round topped hills, whilst the smaller dots are forest trees.

The kidney-shaped figure occurs in other patterns too, and is also known as 'kinuei' 'whetstone' as it resembles the worn surface of a boulder which has been used for sharpening knives.

*Nagulalan*, fig. 15.—A Murut once told his wife to make a pattern, so she got the material ready and started, but, try as she might, she could not succeed in working it out, and at last she showed her attempt to her husband and admitted that she had failed. He was annoyed, and drawing his parang (knife) cut the unfinished mat to pieces, and told his wife that she was useless and incapable. She too then got cross, and challenged him to prove that he was any better at a man's job: let him go and bring her a head. The husband thereupon set out on a raid, and in due course returned with a head and gave it to his wife. She then started again on a new mat, and without any difficulty the pattern worked itself out successfully. The word 'Nagulalan' is derived from 'Agulal' which is equivalent to 'mengeiau' 'to go on a head-hunting raid', and so can be translated "The raiding" or "The Raider's" pattern.

*Nantupan*. "The Meeting."—The design represents four people, two men and two women, either (1) all asleep with their

heads on one pillow (the small circle at the centre), or (2) all drinking out of one tapai jar. The 'men' are at opposite corners, and are distinguished by a diamond-shaped pattern at their waists: this is the roll of the 'chawat' round the loins. Figure 16.

*Pinangulun*.—The 'man' pattern ('ulun' = man), figure 17, also known as *Binangkaut*. "The Fruit Bat." If the 'man' pattern is turned upside down, there is a 'bat' with a pointed head (the man's body) two heavy wings (outlined by the man's arms) whilst the man's head represents the bat's body. This and the "Nantuapan" appear to be the only two patterns in which human beings are represented.

I am indebted to Mr. I. H. N. Evans, Ethnographer, F.M.S. Museums, for assistance in preparing the figures for the press.

### Explanation of Text-figures and Plates.

- FIG. 1. "Crab" pattern—*pinua luob* (pua luob=sea-water crab); *tinadus* (Keningau); *tungup lalaio* (Tenour); from a hexagonal hat.
- FIG. 2. *Batik Kenambau* (Keningau); *pinaluob* (Pensiangan).
- FIG. 3. "Mad" pattern *nomboyunan* (Pensiangan and Telecosan); the hourglass-shaped figures are *Kinuei* (whetstones); the borders can be rounded off according to the width required. *Pengarian* (Dalit) has a lozenge in the large star (A.); *pinagarian saging* (Keningau).
- FIG. 4. *Nomboyunan* (Pensiangan), the narrow form. A. shows the completion of the figure into squares.
- FIG. 5. *Sinomilok* (Pensiangan)=to coil; "herti-nya sēperti ular tidor balinkar;" a variety of the *namboyunan* without the "whetstone." Taken from bottle-shaped rice-basket and section of white (Pamatang) mat with hollow-square centre; *totobik* (Tenom) has a circle instead of a diamond in the centre; and is said to represent a rattle-charm,—a round handle (centre), with pieces of metal hung round it.
- FIG. 6. *Inari Kusub* (*Kusub*=Split pinang) *Inalitang* (Keningau) =a dapur, a pot on four sticks.
- FIG. 7. a. *Binulinsi* (Sapulot)=*gurinsi* (cowrie shells).  
 b. *Pinaku Samundak* (Pensiangan), girl's hairpin; *tim-papaku* (P.), fern-tips.  
 c. *Liniko* (Telecosan), curves or zig-zags; *tetagong* (T.) =snake; *tinikotimog* (T.)=river.  
 d. *Sinusut*; *tiningkabur* (Bohan).

- FIG. 8. Border patterns.
- Binungalor* (Pensiangan), mosquito, *Siniboboh* (P.)
  - A combination of *binungalor* and *nipon kapil*, fish teeth.
  - Binusak lampun* (Pensiangan), durian flower.
  - A more elaborate form.
- FIG. 9. Border patterns.
- Impalilit* or *Simpalilit*, "band" or "fastening" (*lilit* Malay=wind).
  - Binulintong* (Pensiangan), rainbow; *binusosong* (*bososong*, an Eel).
  - Binulintong* or *ginumbalor*, flies with a white "prut," or their tracks.
  - Tinapok banong* (Pensiangan), jumping frog.
- FIG. 10. Mat borders.
- Edge of *Simpalilit* and centre of *Sinusu*.
  - Another variation.
- FIG. 11. Mat borders.
- FIG. 12. Mat borders.
- FIG. 13.
- Binungalor* (Pensiangan).
  - Pinalitan Sinulit* (Pensiangan), from pattern on feathers of "Kuuu" pheasant.
  - Sinalapat* (Pensiangan), bore of Sumpitan; *Sinosulan* (P.), "Sulan" shells.
  - Timpapaku* (Pensiangan), fern tips; *pinaku samundak* (P.), girl's hairpins.
- FIG. 14. *Negimpong*, *negimpangan*, *nagigimpong* or *sinamundak negimpong* (Pensiangan); *inakong-akong* (Telecosan).
- FIG. 15. *Nagulalan* (Pensiangan), a melee or confused fight; *linaupilat* or *linop silat* (Bohan); *nagalian* (Sapulot).
- Sapulot version:—A man agreed to give up his wife (tunang) if she could make this pattern but not otherwise; she succeeded (cf. *negimpong*). For Pensiangan version see text.
- FIG. 16. *Nantapuan*, the meeting.
- FIG. 17. *Pinangulun*, "man" pattern.
- FIG. 18. *Kinarumaling* "creeper" pattern, a knotted stem with leaves and tendrils.

## PLATES.

1. Large mat in the collection of the Raffles Museum.
2. Small pattern-sample mats in the Raffles Museum.
3. Small pattern-sample mat.

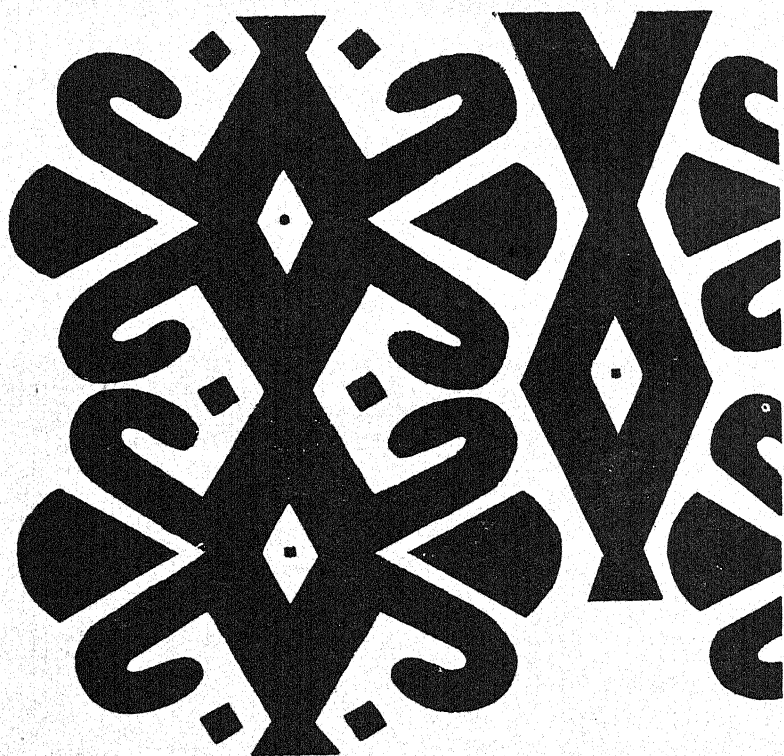


FIG. 1.





FIG. 2.



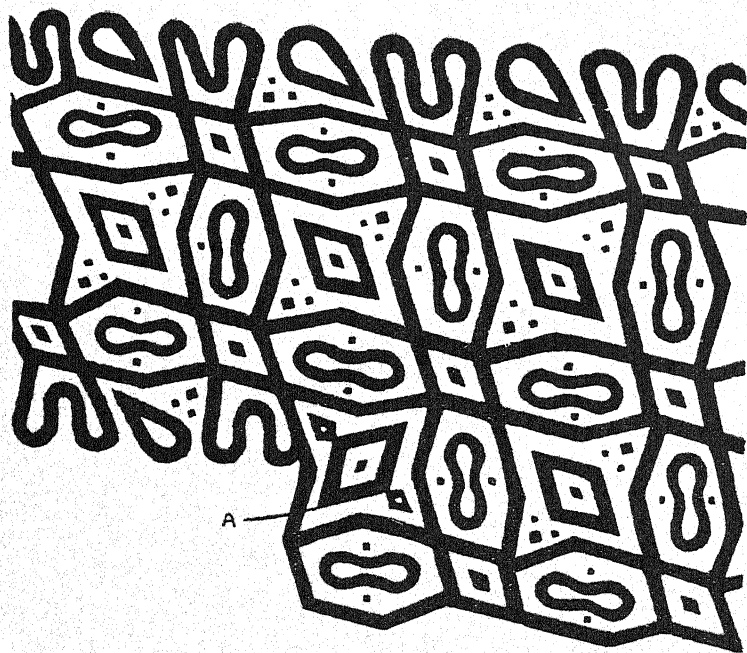


FIG. 3.

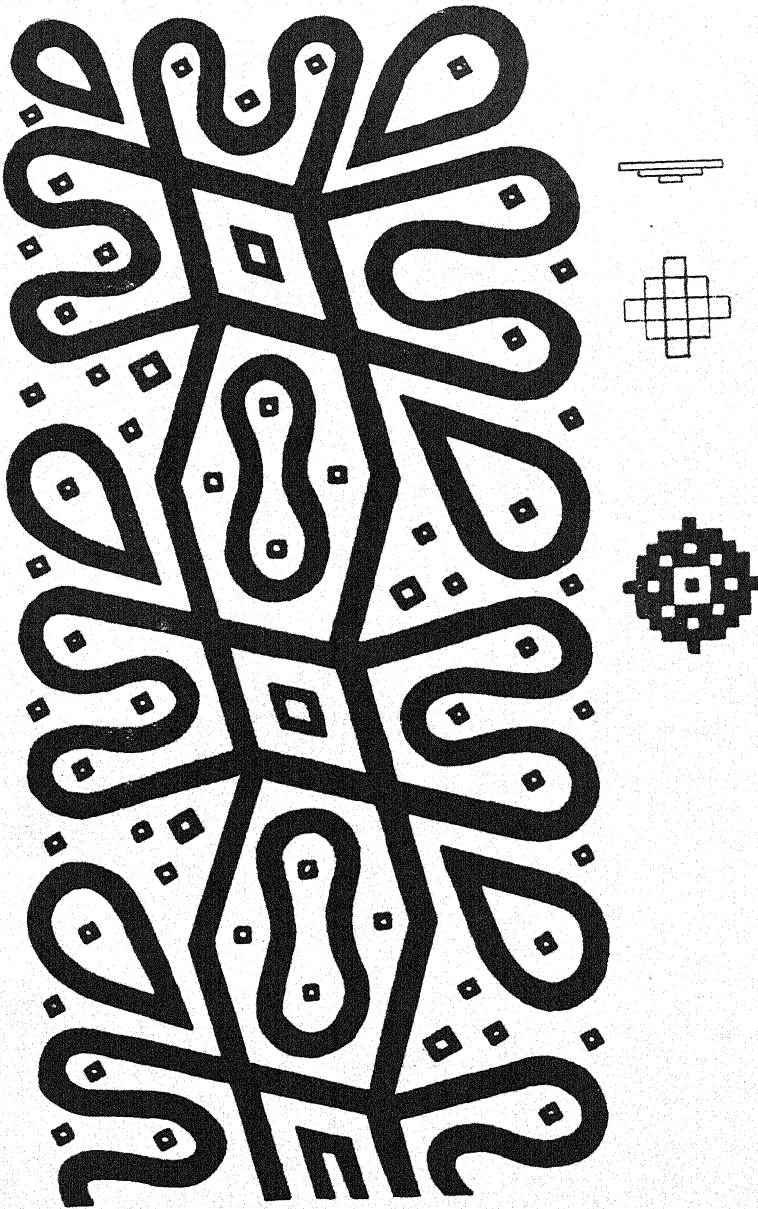


FIG. 4.

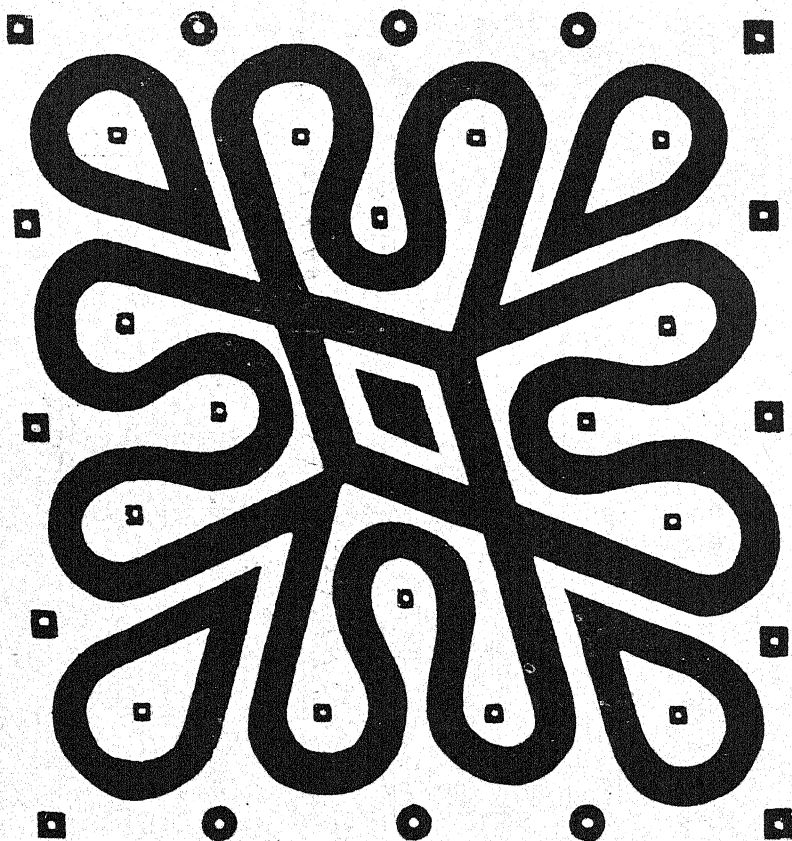


FIG. 5.

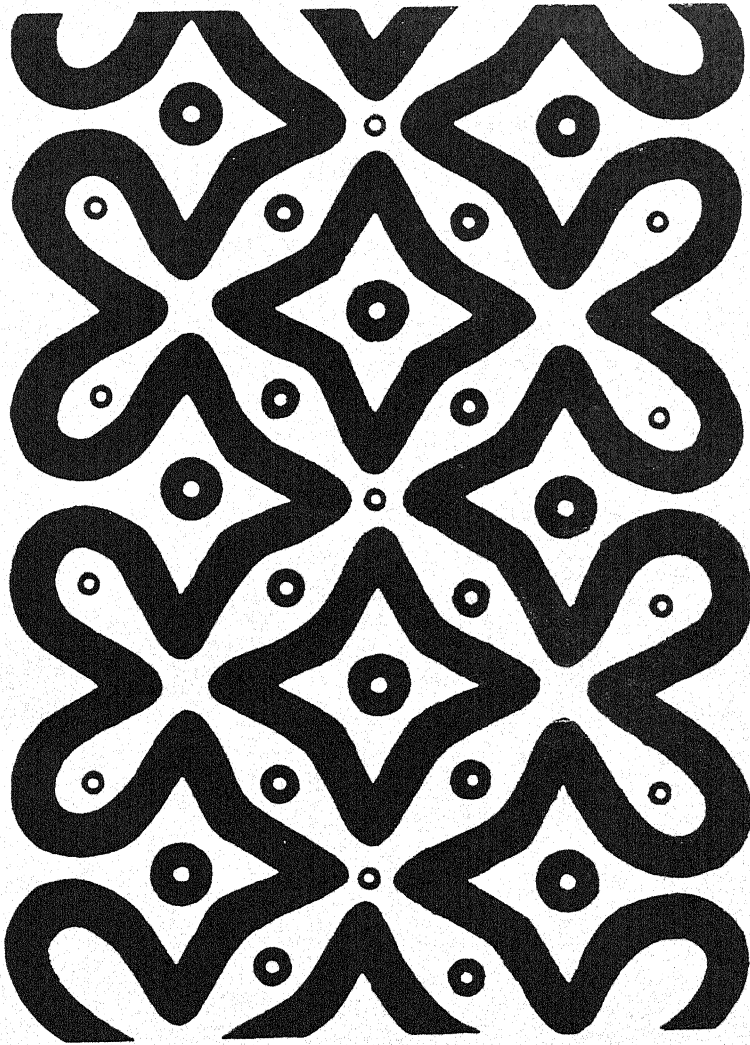


FIG. 6.

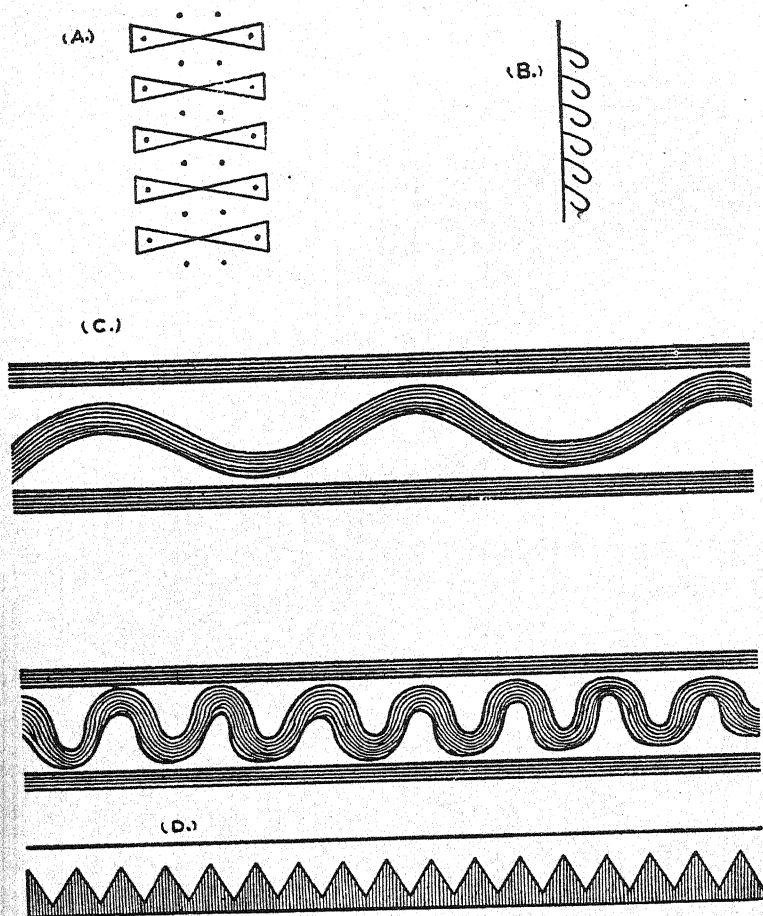


FIG. 7.

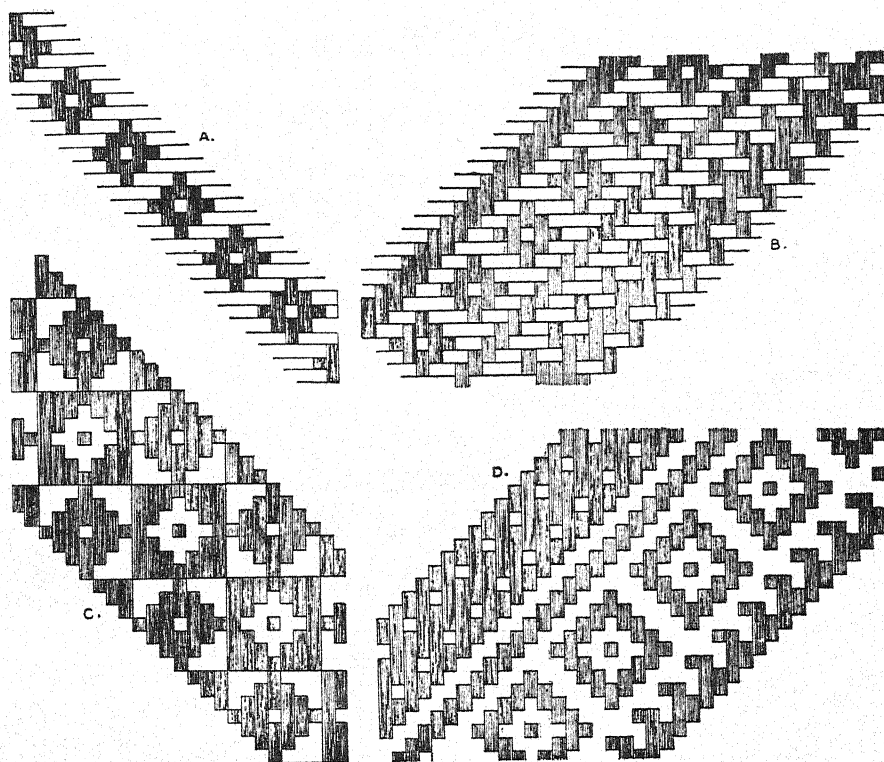


FIG. 8.

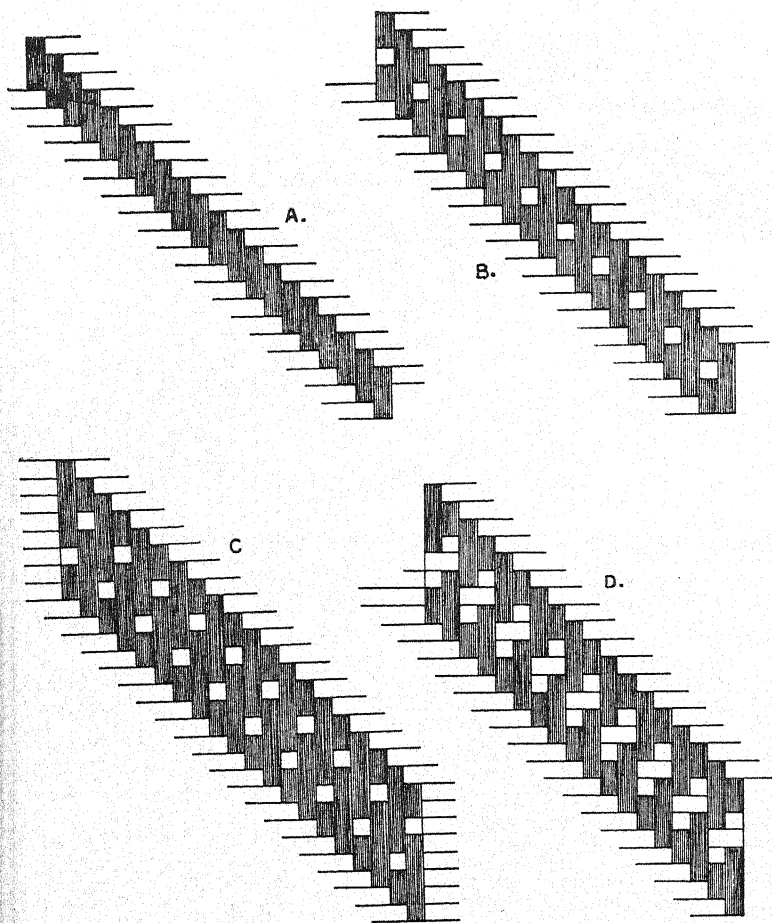


FIG. 9.



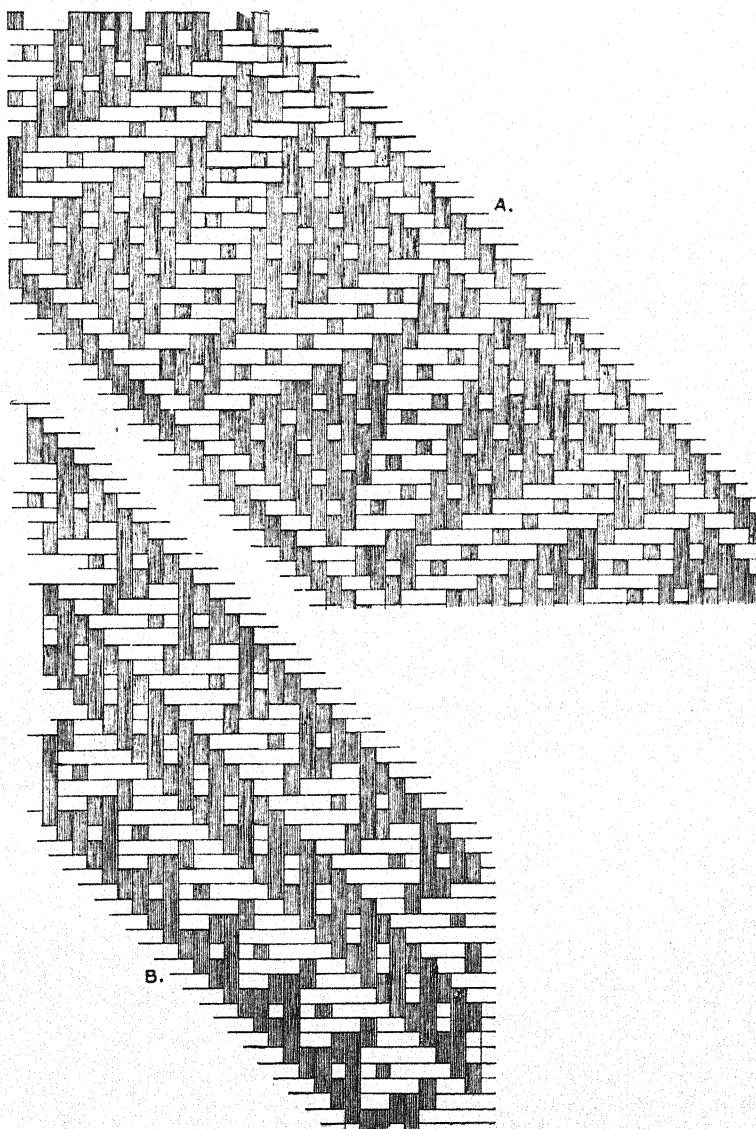


FIG. 10.



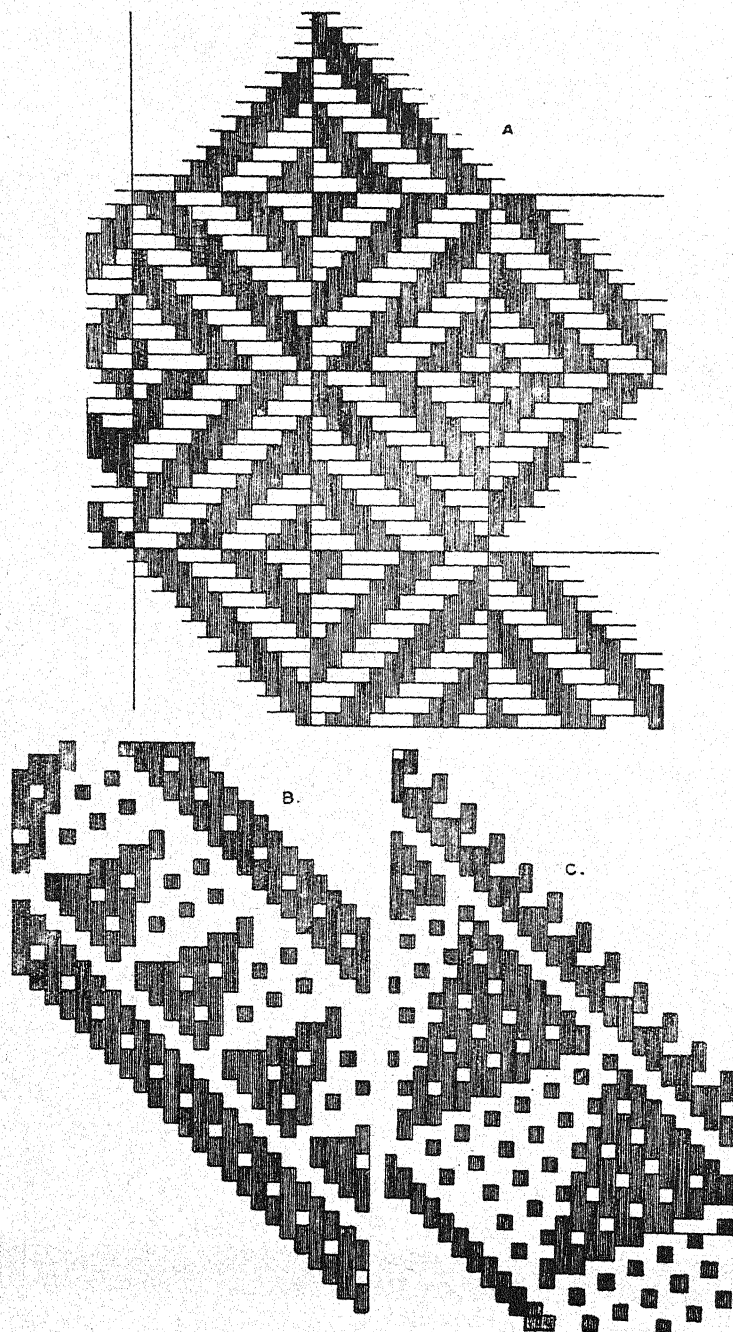


FIG. 11.

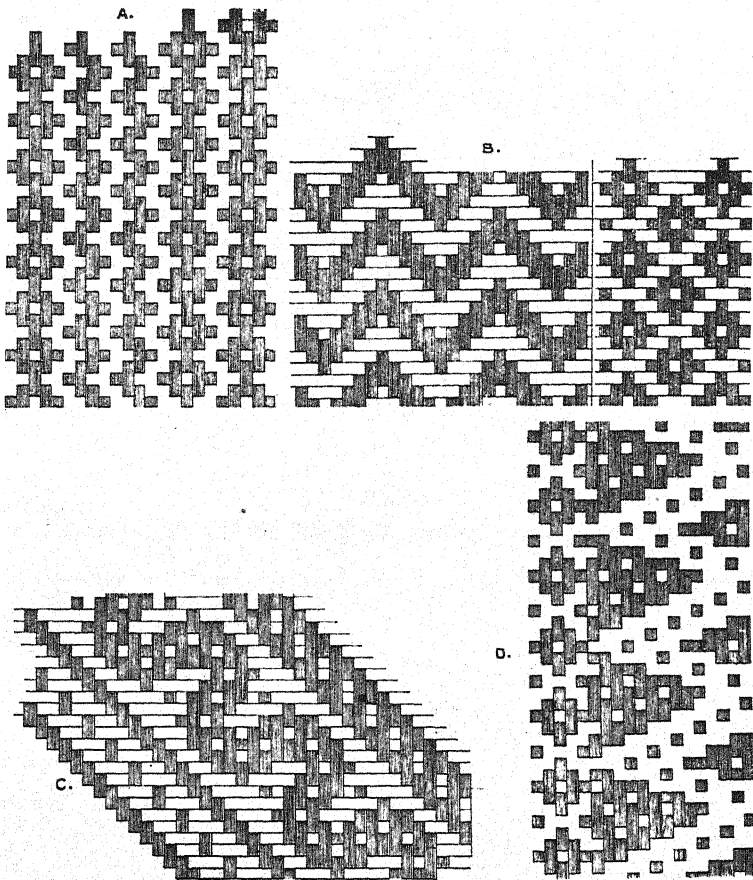


FIG. 12.

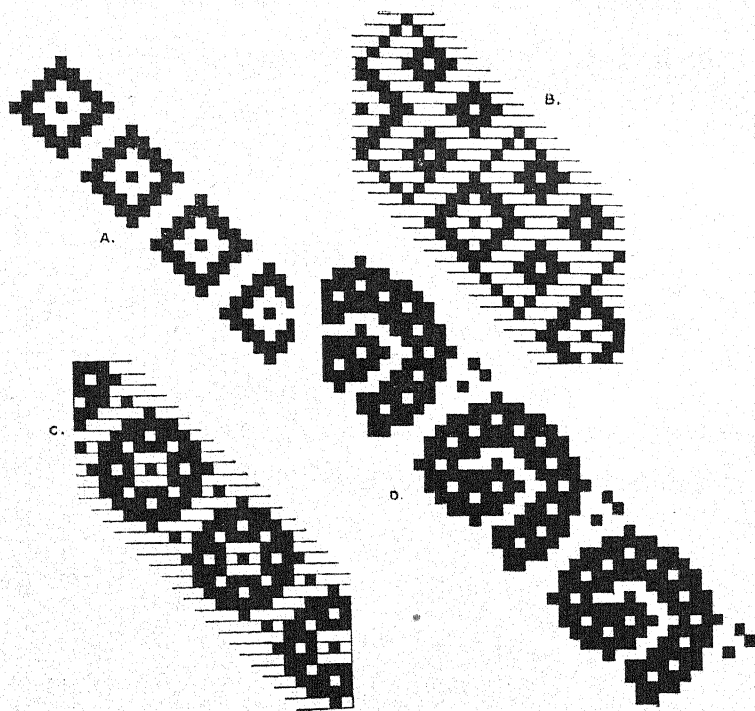


FIG. 13.

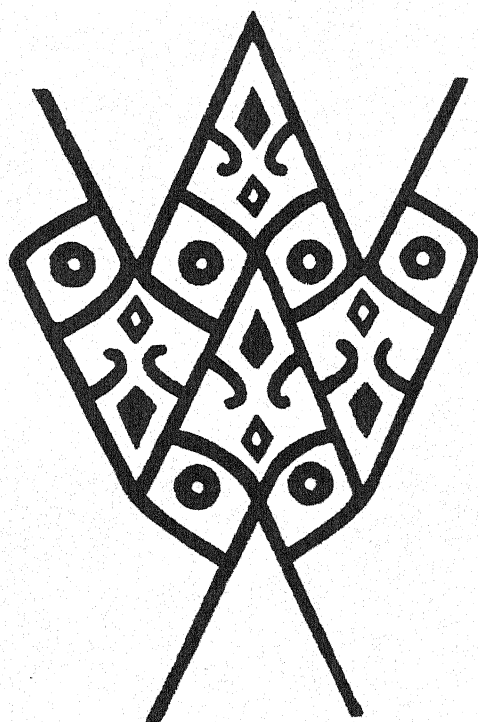


FIG. 14.

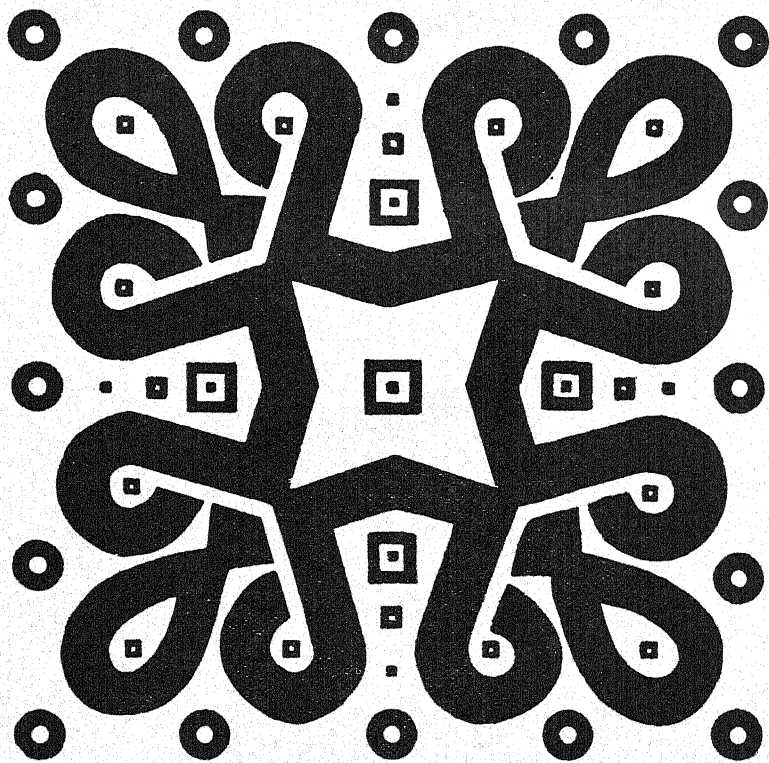


FIG. 15.

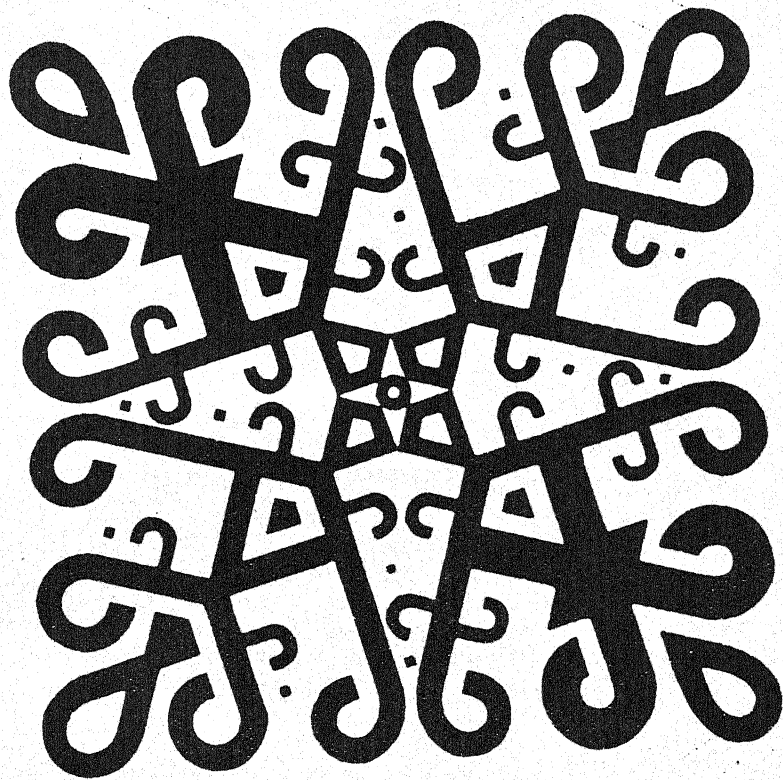


FIG. 16.



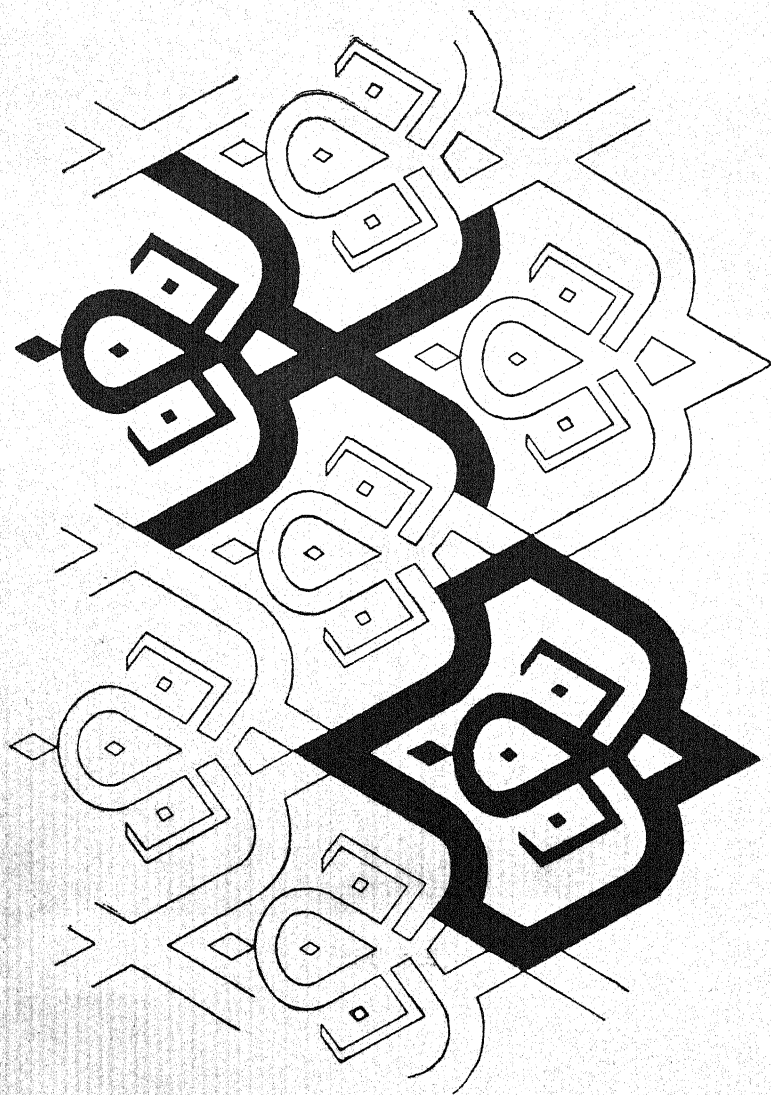
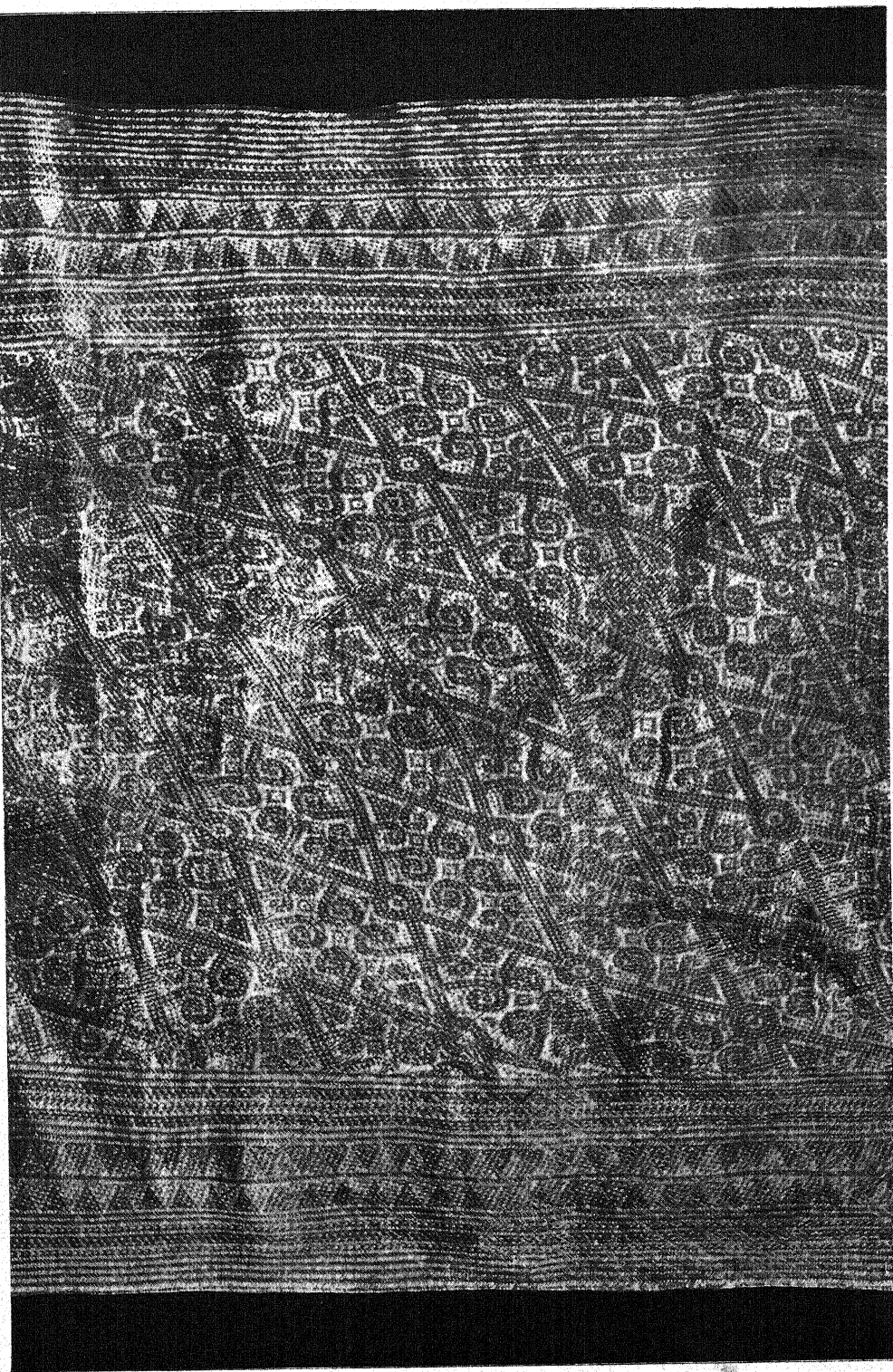


FIG. 17.



WOOLLEY: Some Notes on Murut Basket Work and Patterns.



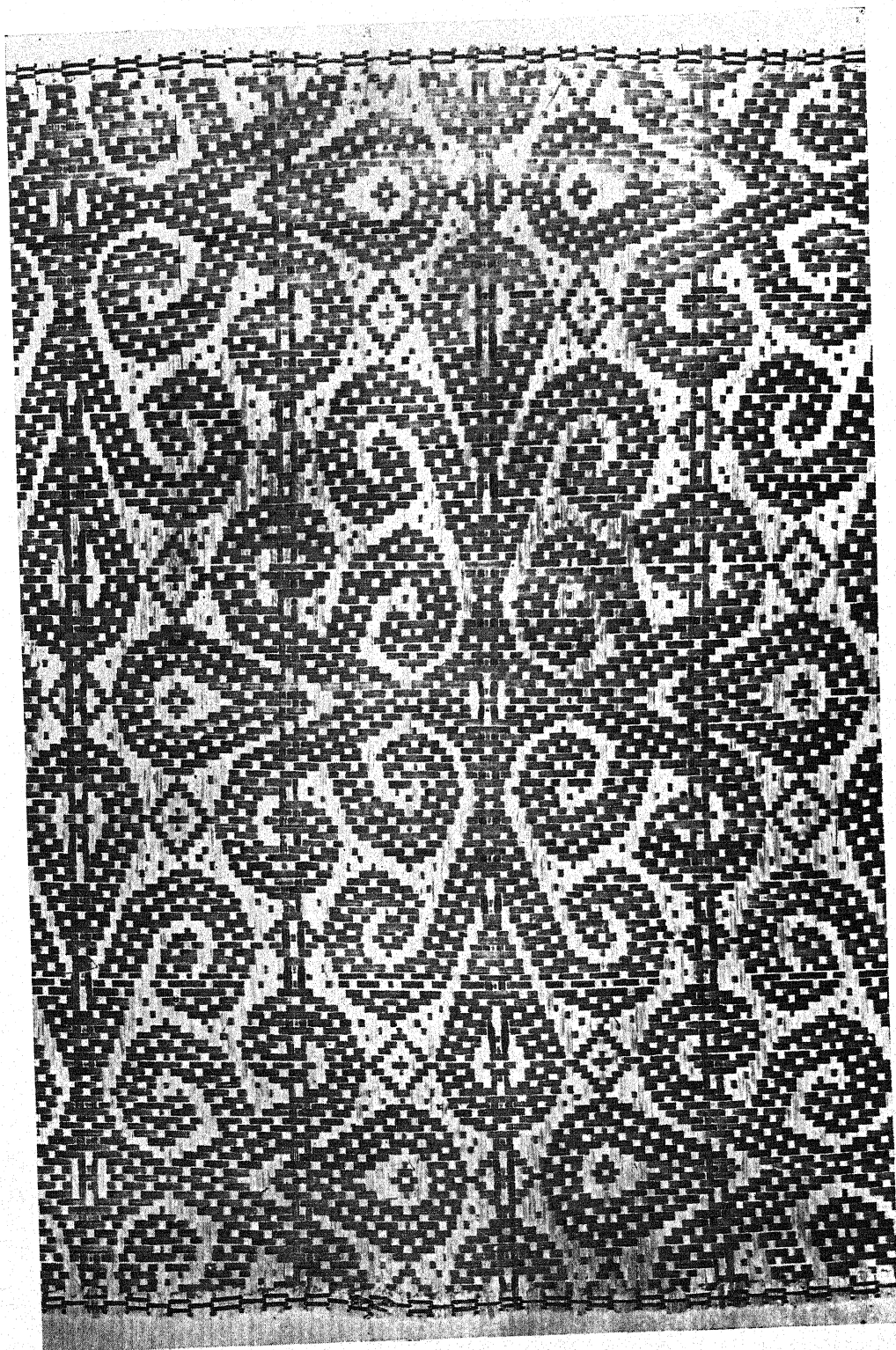




WOOLLEY: Some Notes on Murut Basket Work and Patterns.







WOOLLEY: Some Notes on Murut Basket Work and Patterns.



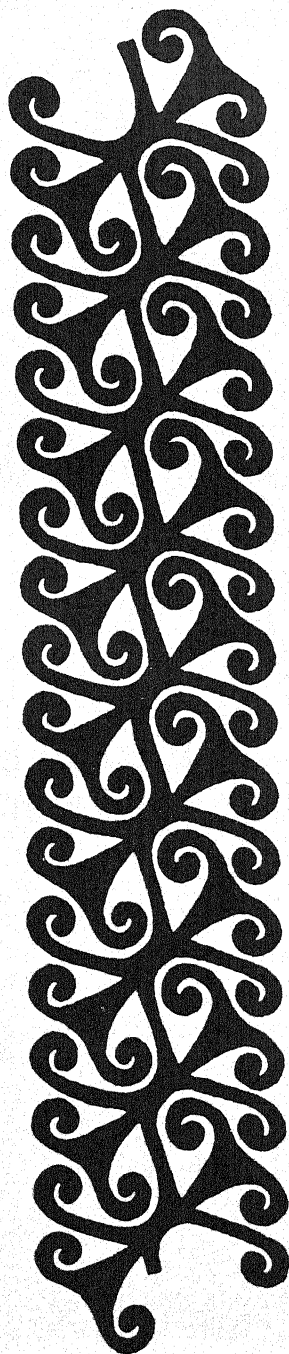


FIG. 18.

## An Old Malay Dictionary.

By R. MEE.

An old and not very well known Malay Dictionary, but one which is nevertheless worth notice, is that written by Thomas Bowery, and printed in London in the year 1701.

It is worth notice in that it is the first Malay-English, English-Malay Dictionary produced, and the pioneer work by an Englishman in the Malay Language, both as regards vocabulary and grammar; and taking into consideration the conditions under, and the date at which it was produced, and the fact that Bowery had no previous book of the kind (as he states) to guide and assist him in compiling it, the labour entailed must have been prodigious.

In his book entitled "Malaya" Dr. Winstedt states, on page 263, in writing of the interest of Stamford Raffles in the Malay language, "most Europeans fail to grasp its grammar after a lifetime among the people," but Bowery, although not perfect in his grammar, certainly acquired a working knowledge of the language which is to be envied. Dr. Winstedt further states in the book quoted that Raffles "was distinguished for his interest in the Malay language".....and "mastered it from some antediluvian book on a long voyage to the East." Is it possible that the "antediluvian book" referred to was Thomas Bowery's Dictionary.

A description of Bowery's Dictionary, and an extract or two from it, may prove of interest to readers of this Journal.

The title page reads:—A Dictionary English and Malayo, Malayo and English. To which is added some short Grammar Rules and Directions for the better Observations of the Propriety and Elegancy of the Language. And also several Miscellanies, Dialogues, and Letters, in English and Malayo for the Learners better understanding the Expressions of the Malayo Tongue, etc.

The Book is dedicated to the Honourable the Directors of the English East-India Company, of whom twenty-four are named, and to the Honourable the Governor, Deputy Governour and Committees of the Honourable East-India Company, twenty-six names being given.

In the dedication Bowery states:—"The following work was undertaken chiefly for the promotion of trade in the many countries where the Malayo language is spoke, which your honours having perused in manuscript, were pleased to approve of; and to encourage the publishing of it....."

A part of the Preface to the book reads as follows:—

"The Peninsula beyond Ganges stretching down to Johor, which is the extreme southern point, and is the most Southern Point of Land in Asia, is generally called and known by the name of the

Malayo Country, and very probably with great reason it retaining to this day the Malayo Language, as the Mother Tongue, and general Language of the Country. Whereas in all the Islands of Sumatra, Java, Borneo, Macasser, Balee, Cumbava, Sallayer, Boootoon, Booro, Ceram, the Mollucas, and innumerable other Islands, the Malayo Language is received and generally used in all the Trading Ports of those Islands, only as the Trading Language, most of those Islands having a peculiar Language of their own; Nay on some of the greater Islands (as particularly on Borneo) there is several Nations and Languages, with several of which I have conversed. But I must tell you, that the Malayo Language spoken in the Islands, is somewhat different from the true Malayo spoken in the Malayo Country, although not so much, but to be easily understood by each other. The Malayo spoken in the Islands is called Basadagang, that is to say, the Merchants or Trading Language, and is not so well esteemed as the true Malayo.

The Inhabitants of those Islands are supposed to proceed originally from the Malayo Country, as being the nearest Continent, from which the Islands proceed in a constant progression, innumerable dispersed all over those Southern and Eastern Seas to New Guinea, part of Hollandia Nova, and from thence by that wonderful large Island of Hollandia Nova, which reaches to Forty four Degrees, South Latitude, not far to the Eastward of which Southern Point is other Land, which probably may be part of Terra Australis, and likely to reach near to Terra del fuego the most southern point of America, as yet known to us, and by this way 'tis not improbable America came to be peopled, as some have not without great reason conjectured.

As to the Religion of the Malayo's, they are now, Mohametans, but they seem to have been Anciently meer Pagans, having not in their Language, the name of God, or Angels, or Church, or Devil, except what's borrowed out of the Arabick Tongue, from whom also they have received many other words. And thence it is, (viz. from the Alcoran) that they have their letters, having had anciently none of their own, but have used the Arabian Letters, excepting only such as are guttural, and of difficult sound; the Malayo Language being of plain sound and easie Pronunciation, and on the contrary, for some sounds not in the Arabick, but proper only to the Malayo Tongue, they have bin forced to add some few of their own, as appears in the end of the Alphabet; some few words they have taken from the Indostan and Persian; as for Wheat, Bread, &c., things not growing or made in their Country, but brought to them from Indostan, Persia, or Arabia, and they together with the thing, received the Country-name it came from.

But to return to my purpose, I am to tell you, that by nineteen years continuance in East India wholly spent in Navigation and Trading in most places of those Countries, and much of that time in the Malayo Countries, Sumatra, Borneo, Bantam, Batavia, and other parts of Java, by my Conversation and Trading with the



Inhabitants of which places, I did furnish myself with so much of the Malayo Language as did enable me to negociate my affairs, and converse with those people without the assistance of a Prevaricating Interpreter as they commonly are.

In the year One Thousand Six Hundred Eighty Eight, I embarked at Fort St. George, as a Passenger on the Bangala Merchant, bound for England, which proving a long voyage, and I being out of Employment, did at my leisure time, set down all that came into my memory of the Malayo Language; which together with some helps that I have attained since, has furnished me with so much of that Language, as I think may be of great use to Trade and Conversation in the Malayo Country or any of the South Sea Islands, in which Countries so great a part of the trade of India is negociated and capable of being much Improved, especially to this Nation, who I hope, will not be unmindful of so valuable a part of that Trade; but as we may by convenient Settlements in those Southern Seas share with the Dutch, the Profits thereof; and I finding so very few English Men that have attained any tollerable Knowledge of the Malayo Tongue, so absolutely necessary to Trade in those Southern Seas, and that there is no Book of this kind published in English, to help the attaining that Language; These Considerations I say, has imboldened me to Publish the Insuing Dictionary, which I am sensible has many Imperfections, I having had very little help to assist me, and not having had the opportunity of Conversation with any Malayo, since I begun this Work, nor in several Years before.

That the ensuing work may become the more useful to my Country Men, for whom it is designed, I thought myself obliged to give some account how I have Spell'd the Malayo Words, with our letters, that they may be the less liable to be mistaken in their Pronunciation; And this I do for the following Reason.

Tho the spelling of every Language, which is written in its own Native Character ought to be the same, which the best Authors who have wrote in that Language have observ'd, in regard those who were Masters of the Tongue, must needs know best the force of their own Letters, and with what Letters to express the sounds of their several words, and in this respect their writings must be our rule, the Observation of which being that which Grammarians call Orthography". . . . . Here follow the rules he adopts for spelling according to the sound of the Malay word, together with details of how each letter of the English Alphabet is to be sounded in the Malay word; and although the resulting orthography, may at this date appear rather quaint, yet it would be quite possible for anyone following his system to pronounce the words with ease and correctness.

One example he gives is worth notice, viz.:—the letter "v", in, for example the word "bava" (bawa), which, he states, has the sound of the English "v" as in the word "Bavin."

The Preface is followed by "A Map of the Countrys where the Malayo Language is spoken," and included in this map are "Malayo" (the Peninsula), "Sumatra," "Java," "Borneo," "Celebes," "Palaran," "Mindano," "Ceram," "Gilola," a part of "New Guinea," and the smaller islands adjacent to those countries.

In the Peninsula itself are marked "New Queda," "Old Queda," "Perach," "Songecalang" (evidently Selangor), "Parseler," "Bantangtega," "Malacca," "R. Moe," "Formosa" and "Johor," on the West Coast.

An Island marked "P. Panjang," opposite "Old Queda," is evidently the present Pulau Penang. Farther north is "P. Lada," probably Langkawi. "P. Sambelan" also is marked.

On the east coast, on the mainland appear the names "Pakan," "Dagon," "Glanenon," "Bajanasay," "Patany," and "P. Ridangh," "P. Capas," "P. Timmore," "P. Pesang," "P. Aoor," "P. Tinge" are also marked.

The "Strate of Sincapore" is also shewn, but the Island is not named. The Islands of "Bantan" and "Lingan" are shewn.

The prominent places marked in the Island of Sumatra are "Achee," "Priaman," "Indepore," "Bencola," "Sillebar," "Pal-lamban," while "Delli," "Padang," "Andrageree," "Jambe," "Sillacar," are, amongst others, also shewn.

In Java are shewn "Bantam," "Batavia," "Cherriboon," "Japara," "Sourabaya." In Borneo "Sucadana," "Baniarmas-seen," "Passir," among others.

The remainder of the book is divided into seven parts, consisting of 268 pages of Dictionary, "English and Malayo," words and examples, and 200 pages of Dictionary, "Malayo and English," words and examples, all arranged alphabetically to the second letter of each word, which alone is no small accomplishment; followed by "Grammar Rules for the Malayo Language," in the introduction to which Bowery says:—"But in regard the nature of a Grammar must exceedingly vary in every Language according to the particular Language to which it is adapted; since the same rules for one Tongue bear no manner of proportion unto another, unless there be a near affinity between the one and the other, I therefore was discouraged about the Method, especially having no light from any Predecessor, having nothing in this kind that ever was attempted by any English Man, that has gone before me that I know of; The Dutch, I confess, have done some things by way of a Dictionary, Dialogues and Grammar, they have also translated the New Testament (a Religious and most commendable undertaking) into this tongue; but as to giving rules for the speaking, or true pronouncing of it, I think I may say, without the stain of Vanity, that no person has yet endeavour'd to do it: This I here mention, to crave an Excuse for those things wherein I shall be found

deficient. In regard I hope it will be allowed that he who makes the first attempt of a discovery, may without the charge either of Negligence or Ignorance be Pardon'd, if he leave some things to be better observ'd by those who succeed him."

It will be observed that Bowery does not claim anything near to perfection for his work; and one does not expect the standard of his Grammar to be as high as that of the present day.

If we bear in mind that, as he states, "...by nineteen years .....spent in navigation and trading.....I did furnish myself with so much of the Malayo Language as did enable me to negotiate my affairs and converse with those people without the assistance of a prevaricating interpreter.....," that is, all that he gives in his book comes from personal observation, the resulting work is by no means a small achievement.

As an instance, his rules for the use of the particles "pe" and "me" leave little to be desired.

He gives "poonea" added to a pronoun as forming a possessive pronoun, *e.g.*:—

"Kitta Poonea"	My
"Tuan poonea"	Thy
"Dea poonea"	His
"Camee poonea."	Ours.
"Camoo poonea"	Yours
"Deoran poonea"	Theirs

This is possibly worth special notice, if it be borne in mind that Bowery heard this use of the word some 240 years ago at the least (he left the East in 1688), and that apparently in places far apart in the Archipelago; but he also uses such sentences as:—

"Jangon karoot can pakean ko."  
 "Jait can baju ko."  
 "Soolam can selemoot ko."  
 "Appa nama moo."

He gives one ending which seems rather peculiar at the present day, *i.e.*, the ending "awn," where "an" would nowadays be used to form the noun. He states "'awn" is used at the end of many words, as in casseawn, moodawn. The 'awn' is to be pronounced as in the English words 'fawn' 'lawn.'"

Other words with this ending are given in the Dictionary, *e.g.*:—

"Pacataawn"	Perkataan
"Janjeawn"	Janjian
"Jamooawn"	Jemuan
"Kookoorawn"	Kukuran
"Kirrimawn"	Kiriman
"Perboorooawn"	Perburuan
"Kajadeawn"	Kejadian

As a trader, Bowery would be likely to come into contact with many people of rank, such as the Raja, to whom he would have to apply for permission to trade, the Shabandar, and other officers, to whom presents would be necessary, and it is to be inferred that he would hear the language spoken correctly; against this must be placed the fact that he would also meet the people of the ports, and places where he called to trade, who would speak the "Basadagang" and that most probably with variations in dialect, so that, it seems fair to assume that the use of "poonea" and the ending "awn" was fairly general throughout the Archipelago.

Allowing for such debatable items, anyone following the rules he gives would learn to speak Malay quite as well as one often hears it spoken today.

The next section of the book is devoted to "Miscellanies," which are of the usual style met with in such a section, and contains no fewer than twenty-one pages. A selection of words and sentences, given below, met with in this section, shew that Bowery had no mean knowledge of the language. The spelling is Bowery's

"Todohan "	Accusation
"Jamat "	Advice
"Gocho "	Slap
"Joo "	You
"Penoojoo "	Please
"Chabang rampak "	Main branches of a tree
"Warna salang "	Changeable colour
"Bawoor "	Crooked
"Gakap "	Stammering
"Sapu edong "	Handkerchief
"Chakar "	Scratching of a dog, in the ground
"Nilas "	Running of the eyes
"Karoot "	Rumple
"Bulat "	Round, as a plate
"Buntar "	Round, as a dome
"Parasch " (Paras)	Round, as a pillar
"Sasat "	Lost, astray
"Minda "	Neat, of dress, of a man
"Selack "	To raise one's clothes, for wading
"Charrat "	A broach, in a cask
"Lazawardee."	Lapis Lazuli
"Toolah "	Punishment
"Singah "	To call at
"Meloora "	Fall of leaves
"Rooboo "	Fall of a house
"Googoor "	Fall of hair
"Dukun "	Native doctor
"Malang "	Adverse of fortune

## Phrases and sentences:—

- “Manacala sooda saya sangool ramboot ko.”  
 “Tindaskan kootoo etoo.”  
 “Patahcan tulang etoo.”  
 “Loontar lecha.”  
 “Jangan mengoobahkan janjee moo.”  
 “Mata ayer.”  
 “Tenga dua boolon.”  
 “Sakien banyak teda dapat de belang.”  
 “Jeka teda bolee menabrang berkangkang, menabrang berloompot.”  
 “Jeka kitta berjalan tummun ea baick, attou kitta bermain mao juga sawarang, hanya teda patoot tummun derree pada benee.”  
 “Poongoot sayoo barang sedekit.”  
 “Sakit petam bobbee.”  
 “Kadang kadang anak anak looloom jarree nea pada sanca nea dea mengisap pintul soosoo.”  
 “Jangon tanea saja tetapee prixa dungan rajing pada sahat enee.”  
 “Boocon etoo cooda jantan.”  
 “Perboootan indah indah etoo la.”  
 “Capal ko berdampar sooda de pooloo panjang.”  
 “Dea sooda singsing lingan baju nea agar jangon de basso.”  
 “Dea mengampaskan kitta ca tana.”  
 “Dea perchick can ayer attas pakean ko.”  
 “Booca poasa.”  
 “Adda la padda ko rooma sa booah benee so oran, anak sa oran, cooda sa ecor, pedang sa ley.”

Following the section of the book dealt with above is a collection of ten dialogues, covering various subjects, among which are “A dialogue between two friends”; “A Dialogue between the King, the Shabendar, the Pepper Weigher, a Merchant and his Partner”; “A Dialogue about a Feast”; “A Dialogue about Sailing”; and so forth. These Dialogues cover some twenty-eight pages, and make interesting and amusing reading.

A part of the tenth Dialogue is given below (omitting the English version of the first column):—

Totoorawn eang ca so pooloo.

Totoorawn antara oran Malayo daen oran barang negree lain.

De negree mana tuan.

Kitta oran Malayo, catawee de Darat besarr eang adda ca sabla Salatan Siam sampee ca oojong tanjong etoo sabla Salatan eang namaee Tanjong Johor, daen enee la de sebootcan negree Malayo.

Sooda tuan menjalanee ca Passack negree Malayo, lagee menampang ca Pooloo pooloo banyak etoo eang adda de bava angin.

Ea tuan, kitta sooda menjalanee daen Menampang ca negree negree etoo banyak tawon.

Jeka buggetoo kitta minta tuan cheritracan padako derree Negree negree bava angin etoo, Derree asal nea, Basa nea, Parenta nea Daganggan appa jenis adda ca negree etoo, lagee addat oran nea.

Kitta choba memadahcan attee moo, barang appa ko bolee, daen maoo moolay dungan cheritraawn attas negree Malayo, ca mana adda bagee bagee Raja (catawee) Raja Quedah, Raja Johor, Raja Patanee, daen banyak lagee.

Oran Holanda de Parentacan barang bageawn darat etoo.

Ea, adda nea negree bessar satoo ampir Rajaawn Johor, nama-neo Mallaca, oran Holanda, oran Chena, daen bagee bagee oran lain moonoo de setoo.

Tampat berniaga etoo ca teda.

Etoo ea tempat berniaga, ampir negree adda la laboan, ca mana pada moosim eang patoot mendatang capal Engrees derree negree Killing, Bangala daen Surat, lagee capal oran negree etoo ampoonea, Capal oran Frangee derree Goa, Oran Castella derree Manilha, Oran Chena derree Japoon, Negree Chena, Tonquee, Cambodia, daen Siam, Oran Malayo dungan oran dagang lain dalam Prawpraw derree Manancabo, Java, Borneo, daen banyak negree lain.

Daganggan appa jenis calooar derree negree enee.

Sedekit saja hanya Tema Pootee. Tetapee addat berniaga tempat enee ea batoocar toocar Daganggan jenis jenis derree Negree negree eang de namaee dauloo, satoo ganti eang lain, carna negree enee ampir de tenga negree samoa etoo.

Baick la, saya Mengartee pada moo, Sacaran jeka penoojoo tuan cheritracan attas Quedah, Johor daen Patanee.

Negree Quedah adda de ooloo soongey eang baick jao jeka modick dungan praw dua arree, sedang oran dalam nea, adda Raja pada nea, de toombo derree setoo tiop tiop tawon barang sa reboo Pecool lada eang terbaik, lagee barang lema reboo Pecool tema pootee, de senee adda lagee, Rotan, Damar, barang sedekit mas, daen sedekit Gading, oran daen basa nea ea Malayo betool.

Sacaran tuan ca Johor.

Negree Johor ea jao de ooloo soongey, Passack nea poonoo oran, adda Raja pada nea, enee la tempat Veniaga sedekit saja, adda Tema pootee dungan lada sedekit saja, oran daen basanea Malayo. Dauloo cala Rajaraja Johor poonea ancatan praw besarr banyak, daen lama dea Memarang dungan raja Achee.

Sacaran tuan ca Patanee.

Patanee ea Bandar, ca mana dauloo cala mendatang oran Chena dungan oran lain, Sacaran Veniaga nea sedekit, adda Raja padanea, tetapee ta-alla acan Siam, Oran daen basanea Malayo betool.

Teadda tampat berneaga lain dalam negree Malayo.

Ea, adda la Junsalon pada sabla ootara Quedah, de Parentacan Raja Siam, Oran daen basa nea Malayo, daganggan nea Tema pootee saja, eang tiop tiop tawon de toombo barang ampat ratoos Bahar, eang Bahar brat gantee batoo timbangan engrees, ampat ratoos ampat pooloo lema (POUNDS) Tampat berneaga lain carna daganggan nea sedekit saja, teda kitta maoo cheritracan.

Jeka buggetoo, kitta minta tuan laloo capooloo pooloo.

Bermoolay, kitta laloo ca Andelis, eang pooloo besarr, adda taalla banyak parenta, eang terbesarr ea Achee, comadean, Manan-cabo Jambe, dungan lain lain, oran Holanda poon parentacan barang tampat, Oran Engrees adda kota de Bancola, fihak Andelis etoo eang addap Java, dauloo cala de parentacan Raja Bantam.

Sacaran jeka tuan penoojoo cheritracan attas Achee, Jambee, daen tampat lain attas pooloo enee.

Achee ea negree besarr daen poonoo oran pada fihak doonea enee Dallamnea moonoo oran eang jaddee de setoo daen banyak oran dagang (catawee) Oran Engrees, Frangee, Guzaratee, Killing, dungan jenis jenis lain. Negree enee dungan Rajat laloo lebbee sa ratoos tawon de parenta can Ratoo, dungan dua blas oran caya, Negree enee de toombo sedang dungan macanan, catawee, Sappee, Cambing, Ayam, Ecan, Brass, lagee de mamoor dungan Booa booa banyak jenis eang terbaik, Negree enee jaoo dua (miles) derree pada Laboan, camana Booloom sa calee coorang capal Engrees, Denmark, Frangee, Guzaratee, Killing, Chena, dungan lain lain, lagee banyak Praw eang masooc soongey.

Enee la segalla mendatang pada moosim eang patoot padanea, dungan jenis jenis daganggan deree negree Guzerat, Killing, Bangala, Chena, daen banyak tampat lain, eang de jewal senee Gantee Mas kepal, eang de dapatee dalam Passack banyak amat.

Negree Achee teda poonea daganggan berniaga.

Sangat sedekit de negree ampoonea, tetapee de Mamoor dungan segalla jenis daganggan atas angin, daen bava angin jooga eang de bava camaree.

Daganggan de bayer Chookee brapa de seetoo.

Oran Engrees lepas sooda derree pada segalla chookee dungan janjeeawn lama, Melain can persoombaawn acan Ratoo, lagee denda laboan eang moora, segalla oran negree lain bayer chookee brat.

Batoo timbangan daen Soocatan de senee, de belang buggetoo.

Batoo timbangan ea, Bahar Malayo, Pecool, Cattée, Booncal, Miam, eang de belang buggetoo.

Namblas Miam sa Booncal.

Dua Pooloo Booncal sa Cattee.

Sa ratoos Cattee sa Pecool.

Dua Pecool sa Bahar Malayo.

Eang Bahar Brat gantee batoo timbangan Engrees namanea, AVERDUPOIS, Tega ratoos sambelan pooloo nam POUNDS, sa blas Ounces, ampat blas GRAINS.

Eang Booncal brat gantee batoo timbangan Engrees Troy, Sa Ounce delapan Penny-weight, dua pooloo tega Grains.

Eang dauloo sooda bercata, etoo la Batoo timbangan Malayo, tetapee deoran lagee Pakee dachin Chena jika mao bertimbang brat eang de belang buggetoo.

Coonderin, Mas, Tial, Cattee, Pecool, Bahar.

Sa Pooloo Coonderin sa Mas.

Sa pooloo Mas sa Tial.

Nam blas tial sa Cattee.

Sa ratoos cattee sa Pecool.

Tega Pecool sa Bahar Malayo.

Eang Pecool Chena brat gantee batoo timbangan Engrees AVERDUPOIS, Sa ratoos tega pooloo satoo Pounds, Tega blas ounces, dua blas penny-weight.

Eang Tial brat gantee batoo timbangan TROY, sa OUNCE ampat Pennyweight, satoo grain.

Brass, Minyak, Minyak sappée, dungan barang jenis dagangan lain dejewel basoocatan, nama nea Bamboo.

Eang Bamboo de mooat gantee soocatan angoor Engrees tenga ampat PINTS.

OOCoorawn eang de Pakee senée lagee de tempat Samoa ca bava angin ea asta, etoo la de mooat Delapan blas iboo jarree tangan lebar chara Engrees.

Sacaran jika penoojoo cheritracan attas Andelis poonea tempat lain.

Negree Padang de parenta can Oran Holanda, de mana dea jewel jenis dagangan, attas angin daen Chena, lagee Garam, samoa etoo de toocar gantee Mas.

Oran Holanda lagee de Parentacan Saleda de mana adda la marreaw Mas, dea poon Parentacan tempat tempat lain de Andelis, Derree mana dea berolee, Mas, Lada, Cominjam, Baroos Rotan besarr, lagee barang sedekit dagangan lain.

Sacaran tuan, ca bendar lain.

Etoo la, Bancola, Sacaran de parenta oran Engrees, ampir tempat enee de Toomboo Lada banyak, lagee barang Cominjan, Rotan besarr, daen rotan kecheel, senée bolee menjewel dagangan attas angin daen Chena Jenis jenis.



Oran de bercheritra can pada ko adda Lada banyak amat de Andelis.

Etoo la betool, derree Negree Baroos pada Pantee sabla Salatan sa mata barat sampee ca Lampoon, Palimbam, Jambe, daen Andrageree eang de sabla ootara timmore, addala tempat banyak de mana toomboo Lada, Sooda lama Oran Holanda adda Godoong de Palimbam, de mana dea billee Lada banyak, daen pada sanca ko, adda lagee de Jambe.

The Dialogues are followed by specimen letters; and the method of the computation of time by Mohametans. In his introduction to this Bowery says:—"The wiser sort of Arabians having made Ware with Mahomet and his followers, in the year of Christ 622, Mahomet was forced to fly or depart Mecha and got to Medena but he afterwards prevailing, settled his Epocha from the time of his flight from Mecha, and named it Hegira, from the Arabian word Hegirathi, which signifies a Flight or Departure; the year to consist of Twelve Moons, and to begin with the Moon named by the Arabians Mooharam in the said year of Christ 622, July 16th., being Friday. The Malayos having generally received the Mahometan Faith did (as all other Nations have done who are of that Faith) receive there with their Epocha and manner of Computation of Time as aforesaid....."

Bowery gives the calculations of "The year of the Hegira and moons to the Year of Christ and Months," from 1701 to 1733.

The remaining pages of the book give specimens of the "Malayo Character," together with various examples shewing how the letters in their different positions in words are written.

Taken altogether, Bowery's Dictionary, written some 228 years ago, although perhaps today not of much practical use to a learner of Malay, yet forms a very interesting book to the student, giving as it does a very extended idea of the language used in the ports and trading places in the "Malayo Countrys" in those days, which, allowing for the inclusion of words gleaned from all over the Archipelago, does not appear to be much altered at the present day.

## Notes on *Aphaniotis fusca* (Peters).

By G. HOPE SWORDER.

(With 3 text-figures).

*Otocryptis (Aphaniotis) fusca* Peters, Mon. Ak. Berl., p. 385, 1864.

*Aphaniotis fusca* Boulgr. Cat. Liz. I, p. 274, 1885.

Laidlaw, P.Z.S. (i), p. 307, 1901.

Boulgr. Journ. F.M.S. Mus. iii, p. 65, 1908.

Robinson & Kloss, Journ. F.M.S. Mus. iv, p. 235, 1916.

Robinson & Kloss, F.M.P. (Rept. & Batr.), p. 64, 1912.

de Rooij, Rept. Ind. Austr. Arch I, p. 90, 1915.

This paper is based on an examination of the 16 fully adult specimens (7 ♂, 9 ♀) enumerated in the accompanying Table of Measurements, etc., and of one immature female. The 11 specimens from Gemas, N. Sembilan, were collected by me in July 1928 and examined before immersion in spirit as well as after.

The other specimens have been very kindly lent to me by the Director of Museums, S.S. and F.M.S., from the collection of Raffles Museum, Singapore, to which institution the Gemas series has been presented.

### A. Description.

The following is a description of the series examined. The words in italics indicate differences from previous descriptions of the species.

HEAD.—*Snout slightly truncate, a little shorter than the orbit*, with sharp canthus rostralis. Rostral broader than deep with a more or less well-defined transverse indentation. Upper head scales keeled, polyhedral. A more or less well-defined Y-shaped series of scales on the snout. Supra-ocular region with enlarged keeled scales. A heart-shaped group of enlarged keeled scales on the occiput. Nasal forming a suture with the rostral or more or less widely separated from it. 7 (6 or 8) keeled upper labials and as many lower labials. Mental large. A pair of chin shields forming a suture behind the mental or separated from each other by a scale, followed by a longitudinal row of 4 to 8 shields on each side, those anterior being in contact with the labials or partly separated therefrom by small scales. Gular scales feebly keeled. *Males with a well developed gular sac* (fig. 1, c.) *females with a smaller gular sac* (sometimes absent?). Tympanum hidden by small scales, with an enlarged scale in the centre. Some scattered enlarged scales on the back parts of the head and on the gular sac.

NUCHAL CREST.—A nuchal crest of small triangular lobes.

**BODY.**—A vertebral row of rather large keeled scales forming a slight dorsal serration. On either side of the vertebral row are three or four longitudinal rows of rather large keeled dorsal scales, below which is a row of very large keeled scales separated from each other (sometimes in pairs). Lateral scales in oblique series, very small, with minute upstanding keels. Some scattered enlarged scales on the sides sometimes forming more or less well-defined longitudinal rows. Ventral scales much larger than the laterals, strongly keeled.

**LIMBS.**—Long and slender. *Addressed hind limb of males exceeds snout by at least half the length of the fourth toe; of females by about one fifth (or more).* Scales of limbs strongly keeled. Fourth toe longest. Fifth toe as long as third or very slightly longer.

**TAIL.**—Cylindrical, very long; with strongly keeled scales.

(*N.B.*—It will be noticed that in two important characters the above description contradicts previous descriptions of the species viz: (a) the presence of a gular sac, and (b) the excess of the addressed hind limb beyond the snout. I can only account for these on the assumption that previous descriptions were drawn up from female specimens, which would account for the omission of the gular sac because although the sac is distinct in freshly killed examples it disappears in the case of females after some weeks in spirit. It would probably account also for the statement that the addressed hind limb reaches the snout, because although the excess is great in some of the females examined it is in the Perak female only 2 mm. (see Table of Measurements), and it is quite possible that there is no excess in examples from other localities unrepresented in the present series.

The presence of a gular sac in this species is important as necessitating a correction in the description of the genus by Boulenger (F.M.P. Rept. & Batr., 1912, p. 64, "no gular pouch").

**COLOUR.**—The colour (in life) of the Gemas series was:—Males; head (except lower jaw and throat) and nape russet; dorsal region brown, sides greenish olive. Gular scales whitish, greenish or yellowish; skin of gular sac black. Ventral surface of body pale brownish grey. Limbs and tail brown with some darker markings. Irides bright blue; inside of mouth paler (cobalt) blue. Females; light brown, paler beneath; two more or less well defined dark bands between the eyes; some dark markings on limbs and tail. Irides gold brown.

Mr. F. N. Chasen who collected the two specimens from the Natuna Is. (1 ♂, 1 imm. ♀) says "the small one was dull olive, paler below; inside the mouth bright pale blue. In the large example I noted that the irides were bright blue like the mouth, general colour olive but the head and fore part of the back washed with russet."

**DIFFERENCES BETWEEN THE SEXES.**—In addition to the differences noted above, a reference to Plate I and to the Table of Measurements, etc. will show that there is some difference in size and proportions. Females on the average are smaller than males; the body (axilla to groin) is however proportionately (even actually) longer in females than in males. The shortness of the neck of the females as compared with males is a noticeable characteristic in the specimens examined but it is possibly rather overemphasised in the examples figured. The male from P. Ubin has a short neck. The difference in the shape of the head is perhaps as a rule not so well marked as the figures would seem to indicate.

**HABITS.**—Active, arboreal; in many respects similar to *Draco*; but often to be found on the ground. On two occasions I saw a male spring sideways a distance of four or five feet from one small tree trunk to another. It was resting on the tree with head upwards, passed through the air in a similar attitude but with legs slightly "spread-eagled," and alighted head upwards on the other tree trunk. The spring appeared almost effortless. Most of the *Gemas* specimens were first seen on tree trunks at distances from the ground of from 6 to 20 feet. The differences between the sexes in shape, size and colour are so well marked that they can be distinguished infallibly even at some distance. Both sexes, but especially the females, may easily be mistaken for *Draco*, unless one is near enough to detect the extra length of the hind limbs. As a rule they were not very shy or difficult to approach, and in one case a male allowed itself to be stalked and caught by hand.

All the females of the *Gemas* series except one (but including the smallest specimen—No. 8) were gravid and contained two fully developed eggs, as did the example from P. Tioman. The eggs are oval, the same size both ends, sides somewhat straight, about 18 mm. by 7 mm.

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### B. Variations Correlated to Locality.

Compared with what has been done in the case of mammals and birds this subject has, so far, received little attention in the case of reptiles, but it will hardly be claimed that the possibilities of distinguishing sub-specific forms are less in the last-named group than in the two first mentioned. The essential condition is, of course, access to large series from different localities, and this constitutes a serious difficulty in the case of many workers who might be disposed to tackle the subject. The writer ventures the

opinion that this difficulty may be largely surmounted if isolated workers describe carefully the material to which they may have access (preferably with drawings). On the combined results it should be possible to formulate definite conclusions. It is in the hope that other workers with access to other material, will make use of his efforts that the writer has prepared Figs. 2 and 3 and the explanatory notes here following.

Figures 2 and 3 were drawn, under a microscope fitted with camera lucida, at 40 times nat. size; the resulting drawings were reduced (by squares) to 10 times nat. size, and from these the fair drawings were made. The fair drawings have been again reduced (in the course of reproduction) to 5 times nat. size.

In comparing the figures of different specimens it will be noted that there are slight differences in aspect. These are not easy to avoid, but need cause no difficulty.

It is in the scales bordering the rostral and the nasal that the most striking variations occur, and it is the opinion of the writer that it is on these, if on anything that sub-specific forms will be differentiated.

*Gemas Series (5 ♂, 6 ♀), Fig. 2, a, b, c and d.*

The normal arrangement in this series is a large anteriorly projecting scale above the centre of the rostral, with a smaller scale on each side of it; outside these, on each side, is the last sharp-edged scale of the canthus rostralis. Below the last-mentioned is a small prominent keeled scale separating the nasal from the rostral.

Chin shields. Fig. 2, d, does not represent the normal of the Gemas series. The normal arrangement is for the first pair to be in contact behind the mental.

The following variations from the normal occur within the Gemas series:—

(i) One male has only two scales above the rostral instead of three.

(ii) One male has the large central scale above the rostral much depressed and scarcely visible from in front.

(iii) In two females the suture between the nasal and the small scale in front of it is obsolete on one or both sides, the place of the suture being marked by a lineal depression and the place of the small scale retaining its shape and prominence—as in the P. Ubin male (Fig. 2, g).

(iv) As mentioned above, No. 5 has the first pair of chin shields separated by a scale.

*P. Ubin, Singapore, 1 ♂, Fig. 2, e, f, g and h.*

There is no very striking difference between this specimen and the Gemas series. The slight difference in the shape of the large

central scale above the rostral may be noted, also the absence of the suture between the nasal and the small scale which in the normal of the Gemas series separates nasal from rostral.

*Sedili District, Johore (East Coast), 1 ♀, Fig. 3, a, b, c and d.*

Differs from the Gemas series in having one very large scale above the rostral instead of three scales. The last scale of the canthus is very deep, on one side forming a short suture with the first labial and thereby separating the nasal from the rostral. On the other side the rostral and nasal are in contact. No trace of the small scale.

*P. Tioman (in China Sea off S. E. Coast of Pahang), 1 ♀, Fig. 2, i, j, k and l.*

A single very large scale above the rostral, as in the Johore example, but more rounded in shape. Nasal widely in contact with rostral on both sides.

*Parit District, Perak (South), 1 ♀, Fig. 2, m, n, o and p.*

Above the centre of the rostral a rosette shaped group of scales, consisting of a central pyramidal scale surrounded by a parapet of four upstanding scales. Nasal very widely separated from the rostral.

All the keeled scales in this specimen are more strongly keeled than in the other examples. The head scales have very high sharp keels, the facets of the scales being deeply concave. Scattered enlarged scales on head and body more numerous. Nuchal crest on a slight nuchal fold. Colour (in spirit) greenish.

*Bungaran, North Natuna Is., 1 ♂, Fig. 3, e, f, g and h.*

A single large scale above the centre of the rostral. The last scale of the canthus very long, extending back to the rear of the nasal; and very wide above. Nasal widely in contact with the rostral. The first pair of chin shields separated by a scale. (*N.B.* the immature female from the same locality agrees with the above, and has 8 (7) upper and 7 (6) lower labials).

## Measurements in Millimetres.

GEMAS, NEGRI SEMBILAN.																			P. Uluh Singapore.	Sedili District Johore.	Pulau Tiomani.	Parti Dist. Perak.	Natuna Is.
RANGE																							
Specimen No.	1	2	3	4	5	6	7	8	9	10	11	1-5	6-11	12	13	14	15	16					
Sex	♂	♂	♂	♂	♂	♀	♀	♀	♀	♀	♀	♂♂	♀♀	♂	♀	♀	♀	♀					
Length	221	211	216	—	221	199	205	178	186	194	198	211-221	178-205	202	178	190	167	228					
Head and Body	65	65	67	65	67	60	61	57	60	60	61	65-67	57-61	61	52	57	55	63					
...	156	146	149	—	154	139	144	121	126	135	137	146-156	121-144	141	126	133	112	165					
—Length	18	18	18	18	18	16	16	15	16	16	16	18	15-16	16	15	16	16	17					
Breadth	10.5	10	11	11	10	10.5	10	9	10	10	10.5	10-11	9-10.5	10	9.5	10	9.5	10.5					
...	6.6	6.8	6.6	6.6	6.4	6.3	6.6	5.5	6.6	6.6	6.6	6.4-6.8	5.5-6.6	6	5.5	6	5.5	6.5					
...	6.6	6.6	6.3	6.6	6.5	5.9	5.5	5.0	5.5	5.3	5.3	6.3-6.6	5.5-9	5.2	5	5	5	6					
Limb	39	41	39	42	39	4	35	33	35	35	34	39-42	33-35	37	33	33	30	41					
Limb	70	70	69	70	68	5.8	58	55	59	60	58	68-70	55-60	66	56	60	54	71					
h Toe	14	13	13.5	14	13	11	12	11	12	12	12	13-14	11-12	13	12	13	10	15					
Limb surpasses snout	8.8	6.3	7.7	10	7	3.6	2.6	2.6	3	3	2.6	6.3-10	2.6-3.6	9	6	9	2	12					
" "	14	16	15	15	11	11	15	13	15	8	15	11-16	8-15	13	11	10	12	19					
...	7	7(8)	7(8)	7	7	7(6)	7	7	7(6)	7(8)	7	7-8	6-8	8	8	7	8	7(6)					
...	7	8	7(8)	7	7	7	7	7	7	8	7(8)	7-8	6-8	8	8	7(6)	7(6)	7(6)					

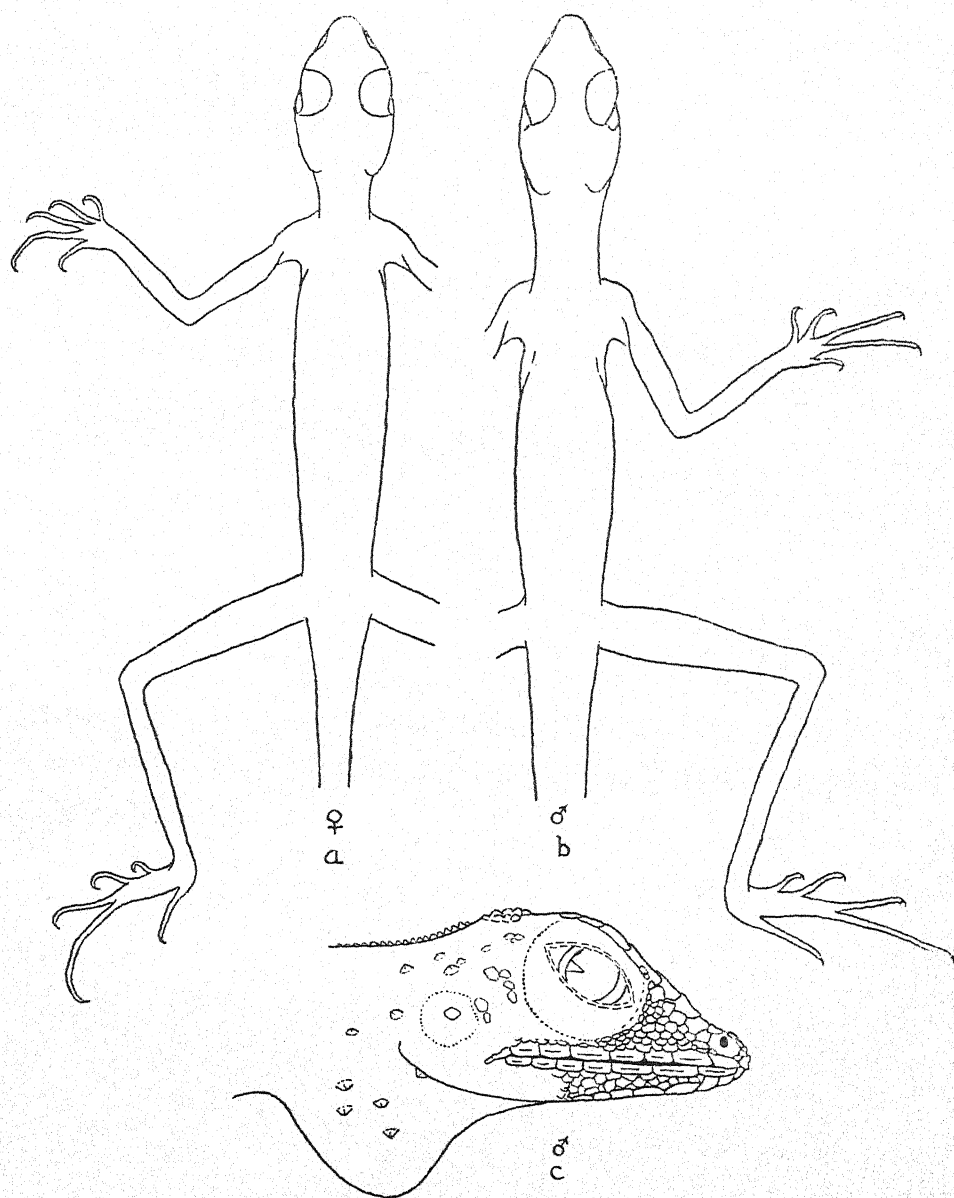


FIG. 1.—*Aphaniotis fusca* (Peters),  
Gemas, Negri Sembilan.



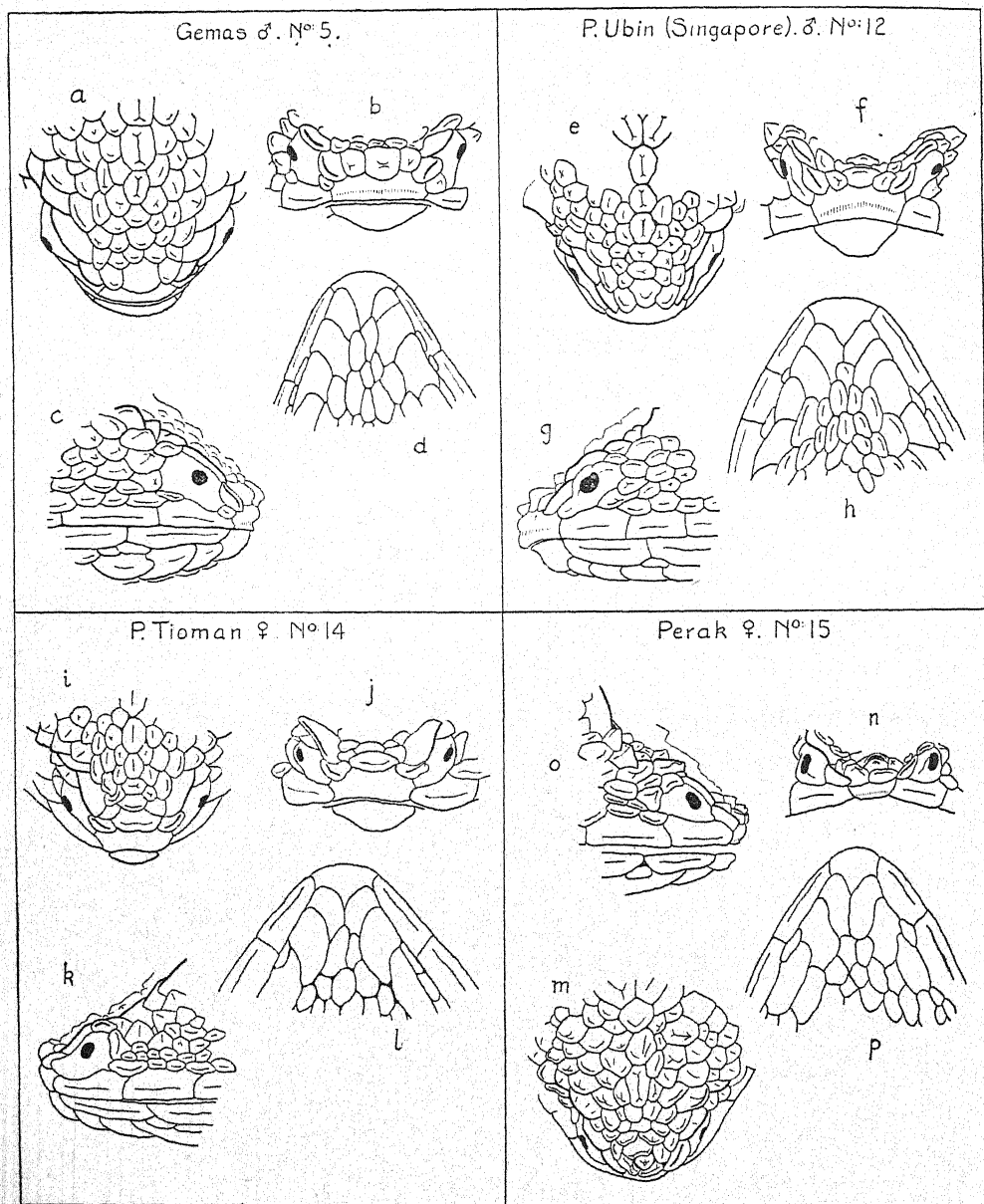
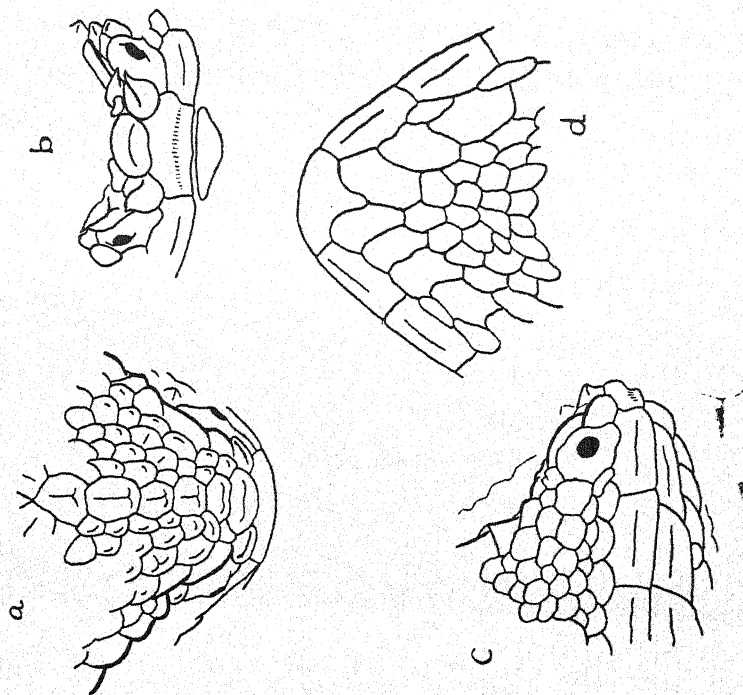
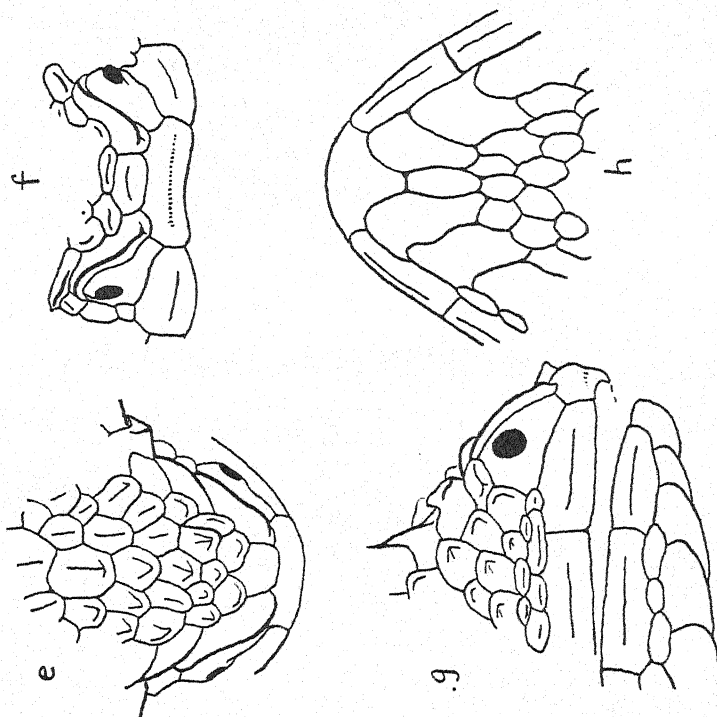


FIG. 2.—*Aphaniotis fusca* (Peters)  
(greatly enlarged).

SEDILI DISTRICT, JOHORE. ♀ No: 13



BUNGARAN, NORTH NATUNA IS. ♂ No: 16.

FIG. 3.—*Aphaniotis fusca* (Peters)  
(greatly enlarged).

## A Note on *Calamaria gimletti* Bouleng.

By G. HOPE SWORDER.

(With 1 text-figure).

Boulenger, Ann. & Mag. Nat. Hist. (7) XV, p. 456, 1905.

Boulenger, Fauna Mal. Pen. (Rept. & Batr.), p. 220, 1912.

Sworder, Singap. Nat. No. 5, p. 100, 1925.

The fourth known specimen of this snake was collected by Mr. Chas. S. Nava Ratnam, Government Dispenser, at Fraser's Hill, F.M.S. at 4,000 feet. As it extends the range of the ventral count by 37, and also differs in markings, it appears worthy of record.

Particulars of the known specimens are now as follows:—

Specimen.	Locality.	Sex.	V.	S.C.	T.L. mm.	Tail. mm.
(1) Type	Kelantan	.. ♀	239	11	265	8
(2)	Mal. Pen.	.. ♂	202	17	175	13
(3)	Johore	.. ♀	249	11 *	278	10
(4)	Fraser's Hill, F.M.S.	.. ♂	165	17 *	176	13

Differs in colour from specimens previously recorded in having no yellow spots on the tail, and in having a large (4 or 5 scales) yellow spot, confluent with the yellow ventral surface, on each side of the body at a distance of eight costals from the head. The brown colour of the upper parts reaches, in places, the outer row of costals.

The specimen has been presented, by the collector, to Raffles Museum, Singapore.

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\* Exclusive of apical scale.

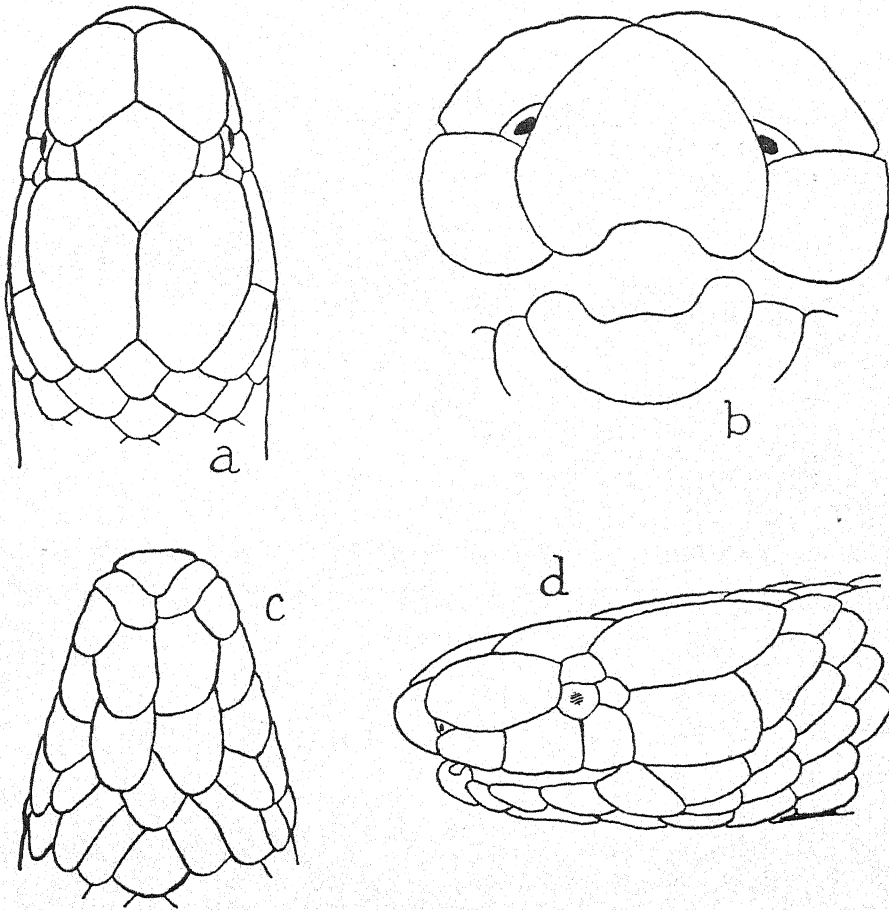


FIG. 1.—*Calamaria gimlette* Boulenger. ♂.  
(greatly enlarged).

## Shaer Ta'bir Mimpi.

By H. OVERBECK.

The contents of a Malay dream-book are enumerated in J. J. de Hollander's "Handleiding tot de kennis der Maleische taal en letter-kunde" (Breda, 1845), and there is a versified dream-book, the *Shaër ta'bir mimpi*, published in Singapore.

Malays apparently pay attention to dreams. It would, however, be interesting to know what the modern Malay thinks about them and to what extent dreams are interpreted nowadays and the interpretation acted upon. The writer once asked a learned ethnologist whether dream-books allow any inference as to the psyche of a people. He denied it. Dream-books are apt to wander far from their original home and unless a dream-book is the product of the people amongst whom it is found, it gives no reliable clue to the psychologist.

The *Shaër ta'bir mimpi* apparently is a medley. The first part is based on the elements of the Mohamedan creed, and the mention of the date-fruit the fig and the camel point to Arabia. Though a house with a ladder leading up to it and mention of the mousedeer and so on suggest a Malay origin, they may be substitutes for similar things unfamiliar to the average Malay. The contents of the *shaër* are apparently taken from some other dream-book. It is a Malay custom to place extracts from didactic books and works of the occult science before the public in versified form. The translator's lithographed copy of the *shaër*, published in Singapore in the year 1326 of the Mohamedan aera (1908 A.D.?) is not very clear, and the writing and spelling are sometimes peculiar, especially as regards Arabic words; occasional mistakes in the transcription may therefore have occurred.

In the appendix are given translations of the few passages from the "Ta'bir Mimpi" given in de Hollander's Malay reader.

---

The author begins with praises of God and His Prophet and an exhortation to adhere to the true faith. Then follows the conventional preface that sadness of heart has induced him to write this poem. Dreams have omens, good and bad, which should be interpreted according to this book. There are twenty chapters treating of different kinds of dreams. There are also dreams which it is not proper to interpret.

The author then proceeds:—

Ini-lah bab mula pertama,  
Di-kata oleh sidang ulama,

This is the beginning chapter,  
Of which the council of the  
learned says,

*Journal Malayan Branch* [Vol. VII.

Ia-itu mimpi harus di-těrima,	Dreams should be accepted as
	omens,
Ta'bir oleh-mu jangan-lah lama.	And interpreted without delay.

---

Jika bėrmimpi mėlihat-nya	
Allah,	If one dreams that he sees God,
Alamat kėbėsaran di-kurniakan-	It is a sign that greatness will
lah,	be bestowed upon him;
Sa-barang maksud tėntu sampai-	All his wishes are sure to be
lah,	fulfilled,
Sa-barang pėkėrjaan dapat	And whatever he does will turn
paėdah.	to his advantage.

---

Jika bėrmimpi di-murkakan	If one dreams that God Most
Allah taala,	High is angry with him,
Atau kapada orang lain pula,	Or with another person,
Alamat itu bėroleh-nya pahala,	It is a sign that one will attain
	great prosperity,
Tėrlalu daripada sakalian	Which will exceed all (pre-
bėhala. <sup>1</sup>	vious?) misfortune.

---

Jika bėrmimpi bėrtėmuan	If one dreams that he meets the
Rasul,	Prophet,
Alamat orang tėrlalu bėtul,	It is a sign that he is very
	honest,
Tidak-lah ia mėnanggong mash-	He will not suffer sorrow,
ghul,	
Sėmula pintaan-nya sakalian	And all that he asks will be
makbul.	granted.

---

Jika orang kafir pula mimpikan,	If an unbeliever dreams like
	that.
Alamat dia bėroleh kėbajikan,	It is a sign that he will acquire
	merit,
Masok Islam tėntu di-kahėn-	He will desire to embrace the
dakkan,	Mohamedan creed,
Ka-dalam shorga kėlak di-	And will be taken into heaven.
masokkan.	

---

Jika bėrmimpi bėrtėmu malai-	If one dreams that he meets an
kat,	angel,
Alamat orang itu mėndapat	It is a sign that he will be
bėrkat,	blessed,

---

= bėla?

Sa-barang pěkěrjaan sēmua  
harkat,<sup>1</sup>  
Běroleh rahmat dunia akhirat.

Whatever he does will be  
speedily done (?),  
And he will obtain the mercy  
(of God) in this and the next  
world.

Jika bėrmimpi mēlihat arash  
dan kėrusi,  
Alamat bėroleh pangkat yang  
tinggi,  
Tiada-lah dia mēndapat bėrkėji,  
Ka-sana ka-mari mēndapat puji.

If one dreams that he sees the  
two thrones of God,<sup>2</sup>  
It is a sign that he will rise to  
high rank,  
He will never be disgraced,  
And will be praised everywhere.

Jika bėrmimpi mēlihat shorga,  
Alamat orang bėroleh suka,  
Sa-barang di-chita dapat bėlaka,  
Tidak-lah ia mēnanggong duka.

If one dreams that he sees  
heaven,  
It is a sign that he will meet  
with joy,  
Everything he longs for he will  
obtain,  
And he will not suffer sorrow.

Jika bėrmimpi titian sirat-ul-  
mustakim,  
Alamat orang itu bėnar dan  
yakin,  
Di-kurnia rahmat ghafur al-  
rahim,  
Tidak mēnanggong papa dan  
miskin

If one dreams of the razor-edged  
bridge (spanning hell),  
It is a sign that one is true and  
honest,  
Compassion will be bestowed  
upon one by God, the All-  
Forgiving, the All-Merciful,  
And one will not suffer destitu-  
tion and poverty.

Sirat-ul-mustakim dapat di-titi,  
Alamat itu bėrbuat bakti,  
Tidak-lah ia mahu bėrhėnti,  
Daripada hidup sampai ka-mati.

If one succeeds in passing the  
razor-edged bridge,  
It is a sign that one shows  
devotion to God,  
In which one will never cease,  
In life and in death.

Jika ta' lėpas titian itu,  
Alamat orang di-rasok hantu,  
Pikiran tidak ada bėrtėntu,  
Fitnah dan bala datang mėlutu.

If one passes not that bridge,  
It is a sign he is possessed of a  
devil;  
His thoughts are not reliable,  
And slander and trials will  
strike him.

<sup>1</sup> حرکت (?) <sup>2</sup> i.e., the heaven of fire and that of crystal.

Jika bẽrmimpi lẽpas dari titian,	If one dreams he has passed that bridge,
Alamat orang bẽroleh kẽbaji- kan,	It is a sign he will acquire merit,
Orang pun banyak bẽrkasehan,	Many people will love him,
Mẽndapat sẽntosa hari kẽmu- dian.	And he will have peace for the future.

---

Jikalau bẽrmimpi lohu'l-mahfud di-lihat-nya,	If one dreams he sees the tablet of destiny,
Alamat orang tẽrang hati-nya,	It is a sign he is clear-sighted,
Mẽnuntut elmu juga kẽrja-nya,	He will occupy himself with the pursuit of knowledge,
Koran pun dapat di-hafalkan- nya.	And get to know the Koran by heart.

---

Jika bẽrmimpi mẽlihat hari kiamat,	If one dreams that he sees the day of judgment,
Alamat orang itu mẽndapat bẽr- kat,	It is a sign he will be blessed,
Sẽntiasa di-dalam sẽlamat,	He will always live in peace,
Di-dalam akhirat bẽroleh shu- faat.	And in the life to come will find mercy.

---

Jika bẽrmimpi naik atas awan,	If one dreams that he ascends the clouds,
Atau orang lain, ayohai ikhwan,	Or that another person does so, oh brethren,
Alamat orang itu sangat kẽmu- dahan,	It is a sign that he will live in great ease,
Di-kurnia Allah dẽngan kẽmu- rahan.	And God in his generosity will favour him.

---

Jika bẽrmimpi matahari dan bulan,	If one dreams of the sun and moon,
Ia-itu turun di-atas ribaan,	That they fall into his lap,
Alamat itu bẽroleh kẽbẽsaran,	It is a sign that one will attain greatness,
Sẽnang sẽntosa dẽngan kẽka- yaan.	And live in comfort, peace and wealth.

---

Jika bẽrmimpi matahari dan bulan,	If one dreams of the sun and moon,
Bẽrbẽlah dua pada pẽnglihatan,	Splitting in two before one's eyes,
Alamat itu datang kẽjahatan,	It is a sign that evil will befall,
Di-haru iblis dan shaitan.	And that one will be plagued by the devil and evil spirits.



Jika matahari atau bulan gēr-  
hana,  
Alamat tiada dapat sēmpurna,  
Orang nēgēri gondah gulana,  
Padah raja-nya akan hēndak  
fana.

If the sun or the moon are  
eclipsed,  
It is a sign that the dreamer will  
not find happiness;  
The inhabitants of the country  
will be plunged into sadness,  
As it means their king is going  
to die.

Jika bērmimpi bintang bērekur,  
Alamat hēndak mēndapat  
maamur,  
Hēndak-lah kami mēnguchap  
shukur,  
Kapada tuhan aziz al-ghafur.

If one dreams of a comet,  
It is a sign one will have every  
thing in abundance,  
And one should offer thanks-  
giving,  
To the Lord, the Mighty, the  
All-Forgiving.

Jika bērmimpi awan di-langit  
di-pandang,  
Alamat orang mēndapat sēnang,  
Rēzēki-nya murah pagi dan  
pētang,  
Sahabat handai bērhimpun  
datang.

If one dreams of looking at the  
clouds in the sky,  
It is a sign that one will live in  
comfort;  
It will be easy to get daily  
bread early and late,  
And friends and companions  
will gather round one.

Jika bērmimpi guroh dan  
halintar,  
Alamat hēndak mēndapat  
sukar,  
Fitnah banyak datang-nya  
bēsar,  
Hēndak-lah kamu bērbanyak  
sabar.

If one dreams of thunder and  
lightning,  
It is a sign that one will experi-  
ence difficulties;  
One will meet with much  
slander,  
And must have much patience.

Jika bērmimpi mega bērcham-  
pur merah,  
Alamat hēndak mēndapat susah,

Suatu bala di-turunkan Allah,  
Ka-dalam nēgēri: itu-lah padah.

If one dreams of white, fleecy  
clouds mixed with red,  
It is a sign that one will meet  
with trouble;  
God will send down a trial,  
On the country: that is the  
dream's import.

Jika bērmimpi mega yang puteh,  
Pandangan mata sangat-lah  
bērseh,

If one dreams of white, fleecy  
clouds,  
Exceedingly bright to look at,

Alamat rēzēki sēnang bēroleh,  
Nēgēri itu raja pun salleh.

It is a sign that daily bread  
will be easily found,  
And that the country will have  
a pious king.

Jika bērmimpi hujan tērlalu  
lēbat,  
Alamat nēgēri di-turunkan  
rahmat,  
Makanan maamur murah di-  
dapat,  
Sēmua - nya orang sēnang  
taziat.

If one dreams of heavy rain,  
  
It is a sign that God will have  
mercy upon the country,  
Food will be plentiful and cheap  
to obtain,  
And all people will live at ease  
and in comfort.

Jika bērmimpi hujan rintek-  
rintek,  
Sērta lanjut, ayohai adek!  
  
Alamat itu kurang-lah baik,  
  
Mēndapat susah pērkarā yang  
pēlek.

If you dream of a drizzle of  
rain,  
Falling for a long time, oh  
brother!  
It is a sign that is less auspi-  
cious;  
You will meet with extra-  
ordinary troubles.

Jika bērmimpi angin dan ribut,  
  
Puting bēliong sambut-mēnyam-  
but,  
Alamat itu sangat-lah karut,  
  
Kēturunan bala kēlam kabut.

If one dreams of wind and  
storm,  
And of squalls following one  
another in succession,  
It is a sign foreboding great  
confusion;  
Misfortune will overcome one  
and profound gloom.

Jika bērmimpi dēmikian itu,  
Hēndak-lah ingat tiap-tiap  
waktu,  
Musoh yang bēsar alamat mē-  
lutu,  
Ka-dalam nēgēri datang-nya  
tēntu.

If one dreams like that,  
One should be on guard every  
moment,  
It is a sign that a powerful  
enemy is going to attack,  
And is sure to invade the  
country.

Jika bērmimpi angin sēdērhana,  
  
Lēmah lēmbut, siti sēmpurna,  
Alamat kēbajikan datang di-  
sana,

If one dreams of a wind just of  
the happy mean,  
Soft and gentle, oh lady true,  
It is a sign that there will be  
prosperity,

Di-kurnia oleh tuhan rabbana. Bestowed by the Lord, the  
Mighty.

Jika bĕrmimpi pohon kayu If one dreams of a tree bearing  
buah, fruit,  
Di-tiup angin pĕrlahan-lahan, Fanned gently by a breeze,  
Alamat rĕzĕki di-kurnia tuhan, It is a sign that the Lord will  
bestow daily bread,  
Di-dalam nĕgĕri jadi kĕlim- And that there will be abun-  
pahan. dance in the country.

Jika bĕrmimpi angin timor If you dreams of a wind from  
barat, East (or?) West,  
Ini-lah tabir, ayohai sahabat! This is the interpretation, oh  
friend:  
Alamat mĕnang daripada sĕtĕru It is a sign that you will  
jahat, triumph over a wicked enemy;  
Jika bĕlayar, aleh-nya bukat. If you make a voyage, any  
disturbance of the sea will  
change.

Jika bĕrmimpi darat di-turun- If one dreams of a coast over  
kan angin, which the wind is blowing,  
Bĕrtiup itu rasa-nya dingin, And the breeze seems to blow  
cool,  
Alamat kĕbajikan sĕgala mumin, It is a sign that all true believers  
will acquire merit,  
Bĕrbuat ibadat sangat - lah And fulfil their religious duties  
yakin. zealously.

Jika bĕrmimpi hujan-nya batu, If you dream of a wind from  
stones,  
Turun ka-dalam nĕgĕri-nya itu, Falling down upon the country,  
Alamat harta halal datang ka- It is a sign that legitimate  
situ, wealth will come there;  
Jangan di-pikir tiada bĕrtĕntu. Think not that it is uncertain.

Jika bĕrmimpi ribut dan hujan, If one dreams of storm and  
rain,  
Gĕlap gulita tiada kĕlihatan, With pitchy darkness, so that  
everything becomes invisible,  
Alamat itu datang kĕjahatan, It is a sign that evil is coming,  
Banyak orang mati kĕsakitan, And that many people will die  
of illness.

Mimpi itu sangat-lah jahat, That dream is most evil,  
Sadikit tiada mĕmbĕri rahmat, And no mercy is portended,

Banyak - lah orang bërbuat masiat, Di-turunkan bala sęgala malai-kat.	Many people will commit treason, And calamity will be brought down by the angels.
--	--

---

Hëndak sęgęra bërtolak bala, Mohonkan ampun kapada Allah taala, Bërbanyak taubat kamu sęgala, Supaya ada rahim azza-wa-jalla.	You should quickly make propitiatory offerings, And ask forgiveness of God Most High; All of you should repent your sins, In order to win the compassion of God, the Great, the Illustrious.
--	---

---

Përi ta'bir bab yang kędua, Supaya boleh di-kętahui jua, Bilangan manusia ada sęmua, Laki-laki pęręmpuan, muda dan tua.	This is the second chapter of interpretations, In order that you be made acquainted with it also; It applies to all mankind, Men and women, young and old.
--	---

---

Jika bërmimpi sahabat-nya Nabi, Abu-Bakar, Omar, Othman dan Ali, Alamat orang itu bëroleh baha-gi, Amal ibadat sangat-lah sufi.	If one dreams of the friends of the Prophet, Abu Bakar, Omar, Osman and Ali, It is a sign he will be fortunate, And very wise in doing good deeds and fulfilling religious duties.
--	---

---

Jika bërmimpi banyak pandita, Męngęrjakan amal shariah yang nyata, Alamat nęgęri bërsuka chita, Raja-nya adil murah bęsęrta.	If one dreams of a number of learned men, Engaged in performing the ritual, It is a sign that the country will experience joy; Its ruler will be righteous and good-hearted.
---	---

---

Jika bërmimpi banyak laki-laki pęręmpuan, Tanda alamat banyak kębajikan,	If one dreams of a large number of men and women, It is a sign of many good deeds (being done)
---	---

Di-něgěri itu Allah turunkan, Amal ibadat orang kěrjakan.	By (the favour of) God bestow- ed upon that country, And people will be zealous in performing good deeds and religious duties.
--	--

---

Jika bėrmimpi pandita nan mati, Alamat hėndak bėrsusah hati, Tiada kėtahuan di-dalam nėgěri, Hukum ugama banyak bėr- hėnti.	If one dreams a learned man is dead, It is a sign there will be grief, Beyond all knowledge in the country; Of the laws of religion many will be abandoned.
---	---

---

Jika bėrmimpi kanak-kanak banyak těrлуу, Bėrhimpun di-dalam nėgěri itu, Alamat kėsukaan orang di-situ, Tiada-lah gondah di-dalam kalbu.	If one dreams of a large crowd of children, Who flock together in his coun- try, It is a sign that the inhabitants will experience joy, And not be sad in their hearts.
--	---

---

Jika bėrmimpi banyak pėrku- buran, Alamat tiada <sup>1</sup> dapat kėbina- saan, Orang nėgěri itu bėrtaburan, Hidup di-dalam mėnanggong kėsukaran.	If one dreams of many ceme- teries, It is a sign that one will (not) be destroyed, (Though?) the inhabitants of the country will be scattered, And live under difficulties.
--	---

---

Jika bėrmimpi ia bėristėri, Alamat hėndak bėrsuka hati, Sangat-lah murah ia mėnchari, Tiada - lah kurang bėroleh rėzėki.	If one dreams that he takes a wife, It is a sign he will experience joy; It will be very easy for him to earn his livelihood, And he will not want his daily bread.
--	--

---

Jika bėrmimpi dudok bėramai- ramai,	If one dreams that he joins in a feast,
--	--

---

<sup>1</sup> Could this be a mistake for "tanda"? The translation of the line should then read: It is a sign that he will meet with disaster.

<p>Alamat banyak, ayohai handai, Jika pērēmpuan mimpi sa-bagai, Tanda bēroleh suami yang pandai.</p>	<p>It is a sign of many things,* oh friend; If a woman dreams like that, It is a sign she will have a clever husband.</p>
--	---

---

<p>Jika bērmimpi budak bēranak, Alamat sampai sēgala kēhēn- dak, Mēndapat istēri yang bērsajak, Jika pērēmpuan, bērsuami yang bijak.</p>	<p>If one dreams of a birth, It is a sign that all expectations will be realized, And that one will have a wife well harmonizing with him; If a woman (dreams like that), she will have a prudent husband.</p>
--	--

---

<p>Jika bērmimpi diri-nya di- bunoh orang, Alamat pēkērjaan jadi tēr- larang, Pikiran itu tiada-lah tērang, Jika bēlayar, lambat-lah pulang,</p>	<p>If one dreams that he is killed, It is a sign that his work will be hindered, And his thoughts will not be clear; If he makes a voyage, it will be long before he returns.</p>
--	---

---

<p>Jika bērmimpi diri-nya tērpēn- jara, Atau dia punya anak saudara, Alamat hēndak di-dalam sējah- tēra, Harta pun banyak tiada tērkira.</p>	<p>If one dreams that one is put into prison, Or any member of one's family, It is a sign he will live in tran- quility, And possess innumerable wealth.</p>
--	--

---

<p>Jika bērmimpi di-rantai leher- nya, Alamat itu jahat padah-nya, Tiada-lah tēntu barang kērja- nya, Orang pun banyak bēnchi ka- pada-nya.</p>	<p>If one dreams that his neck is put in chains, It is a bad omen, Whatever occupation (he tries) will not be reliable, And many people will hate him.</p>
---	--

---

<p>Jika bērmimpi kaki-nya patah, Alamat itu mēndapat susah, Kēmatian saudara itu - lah padah,</p>	<p>If one dreams that he breaks his leg, It is a sign he will suffer sorrow; The death of a brother is portended,</p>
---	---

---

\* A sign of plenty?

Tiada k tahuan barang di-  
jasa.<sup>1</sup> And nobody knows that it will  
bring any luck whatever.

Jika b rmimpi diri-nya t r-  
gantong,  
Atau kaki tangan t rk na  
potong,  
Alamat dia m ndapat untong,  
L pas p nyakit yang di-tang-  
gong. If one dreams he is hanged,  
Or that his hands or feet are  
cut off,  
It is a sign he will be fortunate,  
And the sickness from which he  
suffers will leave him.

Jika b rmimpi m nggantong  
dia,  
Atau ikat kaki tangan dia,  
Alamat h ndak k na p rdaya,  
Sa-barang p k rjaan tiada-lah  
jaya. If one dreams he hangs himself,  
Or that he binds his hands and  
feet,  
It is a sign he will be deceived,  
And not be lucky in any enter-  
prise.

Jika b rmimpi di-palu-nya  
orang,  
Alamat h ndak m ndapat  
barang,  
Hati-mu suka, pikiran t rang,  
Jangan b rkhabar sa-barang-  
barang. If you dream you are beaten,  
It is a sign you will be wealthy;  
Your heart will be glad and  
your brain clear,  
But do not talk about it.

Jika b rmimpi t rk na-nya  
palu,  
Sampai k luar darah-mu itu,  
Alamat h ndak m ndapat malu,  
K turunan harta, pikiran ta'  
t ntu. If one dreams he is beaten,  
Until blood flows,  
It is a sign one will be put to  
shame;  
One will lose property (?), and  
one's thoughts be uncertain.

Jika b rmimpi tangan-nya t r-  
panggal,  
Alamat h ndak m nanggong  
k sal,  
Harta di-chari satu ta' tinggal,  
Jika b rniaga habis-lah modal. If one dreams his hands are cut  
off,  
It is a sign he will suffer regret;  
Of the wealth he acquires  
nothing will remain,  
And if he trades, he will lose  
his capital.

<sup>1</sup>

= jasa?

Jika bĕrmimpi diri-nya kĕ-	If one dreams that he falls ill,
sakitan,	
Alamat itu datang kĕjahatan,	It is a sign that evil will befall
	him,
Karna pikiran di-haru shaitan,	As his thoughts will be disturbed
	by devils,
Pora' pĕranda tidak kĕtahuan.	And he will be plunged into
	confusion beyond description.

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Jika bĕrmimpi banyak kayu api,	If one dreams of a large quan-
	tity of fire-wood,
Alamat kĕsĕnangan di-dalam	It is a sign the people in the
nĕgĕri,	country will live in comfort;
Tiada-lah susah bĕras dan padi,	There will be no difficulty in
	getting rice and paddy,
Sĕmua makanan banyak mĕn-	And all foodstuffs will grow in
jadi.	plenty.

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Jika bĕrmimpi mĕnjabat surat,	If one dreams he holds a letter
	in his hand,
Kitab Koran dapat di-lihat,	(Or?) that he sees the Koran,
Alamat tidak mĕnanggong	It is a sign he will not suffer
mudzarat,	adverse fortune,
Tĕrtolak daripada sĕgala ma-	And will be preserved from
siat.	disobedience (to God).

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Jika bĕrmimpi panjang diri-nya,	If one dreams he is of tall
	stature,
Alamat itu lanjut umor-nya,	It is a sign he will live long;
Jikalau dapat orang bĕrtanya,	If people should ask,
Ini-lah tuan akan ta'bir-nya.	That, sir, is the interpretation.

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Jika bĕrmimpi diri-nya bĕlayar,	If one dreams he is sailing,
Alamat bĕroleh laba yang	It is a sign he will make large
bĕsar,	profits,
Tiada - lah boleh mĕndapat	And will never meet with
sukar,	difficulties;
Ini-lah tuan ta'bir bĕrkhabar.	Thus, sir, says the interpreta-
	tion.

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Jika bĕrmimpi diri-nya bĕr-	If one dreams he is married,
kahwin,	
Dĕngan istĕri orang yang lain,	To the wife of another,
Alamat jahat, jangan-lah main,	It is an evil omen, not to be
	treated lightly,
Di-murkai Tuhan Rabbu'l	As God, the Lord of the world,
alamin.	is angry with him.



Jika bĕrmimpi di-chium orang akan dia,	If one dreams a person kisses him,
Alamat tĕrtolak daripada bahaya,	It is a sign he will be saved from peril;
Hati-mu sĕnang bĕrsuka raya,	You may set at rest your mind, and your heart may rejoice,
Padah-nya hĕndak mĕndapat mulia.	As it forebodes great honour for you.

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Jika bĕrmimpi ia bĕrsahutan, Alamat itu datang ara jahan, <sup>1</sup>	If one dreams that he responds, It is a sign that he is on the path to destruction,
Ia-itu dĕripada Iblis dan shaitan,	Caused by Iblis and Satan,
Padah-nya kamu hĕndak bĕr- bantahan.	It forebodes that you will have altercations.

---

Jika bĕrmimpi sa-tuboh dĕngan ibu-nya,	If one dreams that he lies with his mother,
Atau sĕgala dĕngan-mu haram- nya,	Or with anybody else forbidden to you (by religious law),
Alamat itu baik paĕdah-nya, Bĕroleh kĕkayaan dĕngan sĕm- purna-nya.	It is an auspicious omen, You will get rich and happy.

---

Jika bĕrmimpi bĕrhimpun dĕng- an makan,	If one dreams of an assembly and a meal,
Alamat itu suatu kĕbajikan,	It is a good sign,
Sa-barang kĕrja kamu sĕgĕra- kan,	Whatever you want to do begin at once,
Jangan-lah banyak lagi di-pikir- kan.	You need not deliberate much about it.

---

Jika bĕrmimpi diri-nya bĕr- tĕmu,	If one dreams that he meets
Kapada orang mĕngĕrjakan elmu,	A person in the pursuit of knowledge,
Alamat tidak boleh bĕrsĕmu,	It is a sign that he will not be deceived,
Allah taala kurniakan bantu.	And God the Most High will favour him with assistance.

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Jika bĕrmimpi bĕrtĕmu dĕngan raja,	If one dreams he meets a king,
Alamat itu sa-kadar saja,	It is just a warning,

Hëndak - lah ingat sa-barang kërja, Jangan sampai kamu tērpuja.	You should be on your guard in whatever you do, That you do not become a sacrifice.
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Jika bērmimpi nēracha patah, Alamat itu di-murkakan Allah, Pēkërjaan lalim audzu-billahi, Atau hëndak kēmbali ka- rahmat Allah.	If one dreams the balance (of his scale) breaks, It is a sign God is angry with him, He is doing wrong and should take refuge with God; Or (it is a sign?) he is going to die.
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Jika bērmimpi banyak kēpala, Ka-sana ka-mari tērhantar pula, Alamat itu mēndapat pahala, Jauh di-sēria sēkalian bēhala.	If one dreams of a large number of heads, Scattered here and there, It is a sign he will obtain profit, And will be clear of, and out of the way of all danger.
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Jika bērmimpi di-panggal orang kēpala-nya, Atau orang lain di-mimpikan- nya, Alamat kēbinasaan akan padah- nya, Hëndak-lah sēgēra tolak bala- nya.	If one dreams his head is cut off, Or if he dreams (the same) of another person, It is a sign of threatening ruin, And propitiatory offerings should be made at once.
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Hëndak-lah kamu mēmbēri sēdēkah, Hati-nya ikhlas karna Allah, Fakir miskin banyak suka-lah, Supaya bala di-jauh-kan Allah.	You should give alms, With an upright heart for the sake of God. The mendicants and the poor should rejoice, In order that God may remove the peril.
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Jika bērmimpi tērang mata-nya, Sērta sehat sēgala tuboh-nya, Alamat itu baik padah-nya, Kēbajikan bēsar datang ka- pada-nya.	If one dreams that his eyes see clear, And his whole body is healthy, It is a good sign, And much good will come to him.
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Jika bērmimpi mata-nya buta, Alamat kēdatangan duka-chita,	If one dreams his eyes are blind, It is a sign sorrow will befall him;
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Kesukaran sangat terlalu nyata,	He will undergo great difficulties,
Tidak-lah dapat menchari harta.	And will be unable to acquire wealth.

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Jika bermimpi telinga-nya tuli,	If one dreams that he is deaf,
Alamat itu jahat sakali,	It is a very bad sign;
Orang pun tidak ada kěchuali,	He will not distinguish himself in any way,
Sama abdi dan kuli.	And will be like a servant or a coolie.

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Jika bermimpi patah diri-nya,	If one dreams he breaks in two,
Alamat tiada baik padah-nya,	It is a sign which forebodes no good,
Akan bērchērai dēngan istēri-nya,	He will be separated from his wife,
Sēgala pēkērjaan sukar kapada-nya.	And will find difficulties in whatever he does.

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Jika bermimpi mēnjabat pusat-nya,	If one dreams he grasps his navel,
Alamat tiada baik padah-nya,	It is a sign which forebodes no good;
Akan bērchērai dēngan ibu bapa-nya,	He will be separated from his parents;
Dēmikian-lah tuan di-dalam tabir-nya.	Thus, sir, is it found in the interpretation.

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Jika bermimpi kuku-nya panjang,	If one dreams that his nails are long,
Alamat dia hēndak mēmandang,	It is a sign he will see somebody,
Ia-itu kapada kēkasih sayang,	That is to say his dearly beloved,
Dari jauh akan-nya datang.	Who will come from a great distance.

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Jika bermimpi bulu kētiak di-chukur-nya,	If one dreams he shaves the hair of his armpits,
Alamat itu baik padah-nya,	It is a sign auspicious,
Lēpas daripada sēgala utang-nya,	He will be freed from all his debts,
Hilang-lah susah di-dalam hati-nya.	And trouble in his heart will cease.

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Jika bermimpi ayer liur-nya,	If one dreams of saliva,
Ia-itu bērchampur dēngan dahak-nya,	Which mingles with mucus,

<p>Alamat tiada baik pěkərjaan-nya, Lagi pun dusta sėgala khabar-nya.</p>	<p>It is a sign that his occupation is not good, And that the news (he receives) is false.</p>
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<p>Jika bėrmimpi mulut-nya bėr-gėrak, Alamat tiada sampai kėhėndak, Rėzėki yang halal banyak tėr-tolak, Pikiran yang baik mėnjadi rosak.</p>	<p>If one dreams that his mouth twitches, It is a sign that his wishes will not be fulfilled; Much of his legitimate daily bread will be pushed out of his reach, And good plans will be futile.</p>
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<p>Jika bėrmimpi mėngura-ura-nya orang, Atau sėndiri badan-nya karang, Alamat lėpas daripada bėr-utang, Pikiran yang susah mėnjadi sėnang.</p>	<p>If one dreams that he is chatting with people, Or that he is planning something by himself, It is a sign that he will get free from debts, And that his sorrow will turn to ease.</p>
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<p>Jika bėrmimpi jin dan shaitan, Hantu Iblis banyak kėlihatan, Alamat itu datang kėjahatan, Fitnah bėsar bukan buatan.</p>	<p>If one dreams of spirits and devils, And of demons being seen in large numbers, It is a sign evil will befall him, And that he will suffer from slander out of the common.</p>
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<p>Barang siapa bėrmimpi bagitu, Hėndak di-bunoh-nya orang padah-nya itu, Banyak aniaya datang mėlutu, Pikiran tidak ada bėrtėntu.</p>	<p>If one dreams like that, It is a sign that people want to kill him, He will suffer much from injustice, And his thoughts will be in confusion.</p>
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<p>Jika bėrmimpi diri-nya bėrelmu, Atau bėrtėmu alim guru-mu, Alamat tidak boleh tėrsėmu, Banyak-lah orang mėmbantu kamu.</p>	<p>If one dreams that he is learned, Or meets a learned teacher, It is a sign that he will not be deceived, And many people will help you.</p>
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<p>Jika bėrmimpi mėmbuat bėr-hala,</p>	<p>If one dreams he makes an idol,</p>
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Alamat tidak-lah oleh pahala, Orang itu di-murka Allah taala, Sa-barang kërja mëndapat bala.	It is a sign he will have no luck; God Most High is angry with him, He will be unfortunate in what- ever he does.
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Jika bër mimpi mënju mata- hari, Alamat itu sënang mënchari, Jika bër layar lain nĕgĕri, Hëndak-lah hampir kapada mëntĕri.	If one dreams he turns in the direction of the sun, It is a sign he will earn his livelihood easily; If he makes a voyage to another land, He should approach the high officers.
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Jika bër mimpi diri-nya jadi binatang, Alamat pĕnyakit hëndak-nya datang, Entah - kan pagi ĕntah - kan pĕtang, Mĕnjadi gila lain pĕmandang.	If one dreams he turns into an animal, It is a sign illness is approach- ing, Perhaps in the morning, perhaps in the afternoon; Others think it a sign of coming madness.
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Jika bër mimpi kurus diri-nya, Atau tambun pula rasa-nya, Alamat itu baik padah-nya, Di-hormatkan orang akan dia- nya.	If one dreams that his body is thin, Or that he is plump, It is an auspicious sign; People will show him great respect.
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Jika bër mimpi mĕnyukor diri- nya, Alamat bĕrcherai dĕngan istĕri- nya, Sĕrta gondah pula hati-nya, Dĕmikian tuan akan padah- nya.	If one dreams that he shaves himself, It is a sign he will be separated from his wife, And that he will be very sad. Thus, sir, is the portent.
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Jika bër mimpi diri-nya bĕr- tikam, Maka kĕluwar darah yang hitam, Alamat banyak di-dalam faham,	If one dreams that he stabs himself, And dark blood pours out, It is understood to mean many things,
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Sakalian pënyakit s ë m u a padam.	All illnesses will disappear.
Jika bërmimpi këluaran darah, Daripada tuboh-nya bërchurah- churah, Alamat banyak dapat paëdah, Bëroleh harta tiada-lah payah.	If one dreams that he loses blood, Which pours out of his body, It is a sign he will be fortunate, And acquire wealth without difficulties.
Jika bërmimpi diri-nya bër- pindah, Dari nëgëri atau lain rumah, Alamat tidak mëndapat paëdah, Barang kërja mënjadi susah.	If one dreams that he shifts his home, From the country or from another house, It is a sign he will not be fortunate, And that every work will lead to trouble.
Jika bërmimpi diri-nya më- warna, (?) Atau mëmakai kain kënchana, Alamat itu bëroleh sëmpurna, Mëndapat harta sangat bër- guna.	If one dreams that he is dressed in gaudy colours, (?) Or that he wears a golden skirt, It is a sign he will be lucky, And will acquire wealth which will be very useful.
Jika bërmimpi diri-nya di- makan lintah, Alamat tiada mëmbëri paëdah, Orang ta' suka lawan bër- madah, Ka-sana ka-mari tundok tënga- dah.	If one dreams he is bitten by leeches, It is a sign which forebodes no good, People will not like him and will oppose his words, He will wander distracted.
Jika bërmimpi mëlihat aurat- nya, Sëpërti orang përëmpuan di- pandang-nya, Alamat bëroleh anak kapada- nya, Atau harta; itu akan padah- nya.	If one dreams that he sees pudenda, Like those of a woman, It is a sign a child will be born to him, Or that he will obtain wealth: such is the portent.
Jika bërmimpi diri-nya bër- sumpah, Dëngan mënyëbut nama-nya Allah,	If one dreams that he takes an oath, Invoking the name of God,

- Kurang baik di-dalam padah,  
Suatu tidak mēmbēri paēdah.
- It is an omen less auspicious,  
And will not bring any  
advantage.
- 
- Jika bērmimpi diri-nya mēnan-  
gis,  
Alamat pērchintaan sēmua  
khalis,  
Duka-chita sēmua habis,  
Bērsuka-sukaan di-dalam maj-  
lis.
- If one dreams that he weeps,  
It is a sign he will be freed  
from all sadness;  
All his sorrows will disappear,  
And he will enjoy himself in  
company.
- 
- Jika bērmimpi diri-nya mati,  
Kēmudian hidup dēngan sē-  
pērti,  
Alamat hēndak bērsuka hati,  
Barang kēhēndak sēmua di-  
dapati.
- It one dreams that he dies,  
And then lives again as be-  
fore,  
It is a sign he will experience  
joy,  
And obtain whatever he wants.
- 
- Jika bērmimpi diri-nya fana,  
Alamat itu dapat sēmpurna,  
Dēngan kurnia Tuhan yang  
ghana,  
Umur-nya lanjut tērlalu bena.
- It one dreams he has departed  
life,  
It is a sign he will be happy,  
And by the favour of God, the  
Powerful,  
His life will be exceedingly long.
- 
- Jika bērmimpi diri-nya kēma-  
tian,  
Di-bawa orang kapada kuburan,  
Alamat hēndak bēroleh kēbaji-  
kan,  
Mēnjadi sēnang di-dalam kē-  
kayaan.
- If one dreams he is dead,  
And is brought to the cemetery,  
It is a sign of luck,  
He will live in comfort and  
wealth.
- 
- Jika bērmimpi banyak orang  
mati,  
Alamat itu bērsusah hati,  
Bēroleh harta tiada sēpērti,  
Tiada boleh mēngisi pēti.
- If one dreams that many people  
die,  
It is a sign he will have trouble;  
He will not obtain wealth as it  
should be,  
And will not be able to fill his  
coffers.
- 
- Jika bērmimpi diri-nya bēr-  
pindah,  
Sampai di-sana ia-nya sudah,
- If one dreams he moves from  
one place to another,  
And that he has already arrived  
(at his new place),

Alamat itu bĕroleh paĕdah. Mĕndapat harta mĕmbĕri paĕdah.	It is a sign he will be lucky, And obtain useful wealth.
Jika bĕrmimpi diri-nya bĕr- pĕsan, Pada orang mati pada pĕrasaan, Alamat datang suatu kĕbinas- aan, Tiada sĕmpurna barang pĕkĕr- jaan.	If one dreams he gives instruc- tions, To a person he thinks to be dead, It is a sign that calamity is approaching, Whatever he does will not be successful.
Jika bĕrmimpi diri-nya mĕnjadi raja, Atau orang lain mĕnjadi raja, Alamat itu di-sĕngaja-ngaja, Tiada mĕnjadi sa-barang kĕrja.	If one dreams he becomes king, Or that another person becomes king, It is a sign that (?) he will be deceived, And that nothing will come of all his work.
Jika bĕrmimpi naik tĕmpat yang tinggi, Batu dan kayu barang sa-bagai, Alamat itu tiada-lah rugi, Mĕndapat martabat pangkat yang tinggi.	If one dreams he climbs a high place, A rock, a tree or the like, It is a sign he will not suffer loss, But attain to high office and rank.
Jika bĕrmimpi panjang janggut- nya, Alamat itu banyak paĕdah-nya, Tiada-lah gondah di-dalam hati- nya, Mĕngĕrjakan amal dĕngan sĕ- pĕrti-nya.	If one dreams that his beard is long, It is a sign which bodes much good, He will never experience grief, And will do good deeds as they ought to be done.
Jika bĕrmimpi barang suatu Bĕnda yang tinggi di-lihat-nya itu, Alamat bĕrlayar padah-nya tĕntu, Di-mana sampai bĕroleh tĕntu.	If one dreams of any thing High to look at, It is a sure sign he is going on a voyage, And he will find (what he wants?) wherever he comes.
Jika bĕrmimpi diri-nya bĕr- puru,	If one dreams that he is suffer- ing from frambosia,



Atau kudis bĕrgaru-garu,	Or from scurf which he always scratches,
Alamat banyak tiada-lah karu,	It is a sign of untold abundance,
Mĕndapat harta bĕnda yang baru.	That he will obtain new riches.

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Jika bĕrmimpi panjang rambut-nya,	If one dreams his hair is long,
Alamat banyak akan paĕdah-nya,	It is a sign which forebodes much good;
Bĕroleh istĕri sĕpĕrti kĕhĕndak-nya,	He will get a wife according to his wishes,
Atau bĕranak dĕngan sĕpĕrti-nya.	Or will have a child in due course.

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Jika bĕrmimpi sangat tambun-nya,	If one dreams he is very plump,
Atau kurus sangat badan-nya,	Or that his body is very thin,
Alamat bĕroleh rumah padah-nya,	It is a sign that he will obtain a house,
Tĕtapi tiada kĕkal di-dalam-nya.	But not live permanently in it.

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Jika bĕrmimpi diri-nya sakit,	If one dreams that he is ill,
Atau dĕmam tiada tĕrangkit,	Or has fever continuously,
Alamat kĕrugian tiada sadikit,	It is a sign that he will suffer considerable loss,
Payah kapada duit dan ringgit.	And have difficulty (in getting) dollars and cents.

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Jika bĕrmimpi dudok di-atas batu,	If one dreams that he sits on a rock,
Alamat baik paĕdah-nya itu,	It is an auspicious omen;
Bĕroleh pĕkĕrjaan yang amat tĕntu,	He will find occupation that will be reliable,
Sĕrta ada orang mĕmbantu.	And there will be people to help him.

---

Jika bĕrmimpi tĕrbuang diri-nya,	If one dreams that he is exiled,
Oleh shaikh yang mĕmbuang-kan-nya,	And that it is a sheikh who banishes him,
Alamat itu baik paĕdah-nya,	It is a sign boding him good,
Di-pĕliharakan Allah akan diri-nya.	And he will be taken care of by God.

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Jika bĕrmimpi shaikh-nya murka,	If he dreams that the sheikh is angry,
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Alamat hëndak mëndapat duka,	It is a sign that he will experience sorrow,
Banyak-lah orang tiada-lah suka,	Many people will not like him,
Mëlihat dia bërmasam muka.	And make wry faces when they see him.

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Jika bërmimpi bërkata dëngan raja,	If one dreams he speaks to a king,
Alamat baik sa-barang kërja,	It is a sign that all work will turn out well,
Përkhabarkan di-ikut-nya saja,	He may act on the news he receives,
Pada orang bësar tërлуу manja.	And will be the favourite of men of high station.

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Jika bërmimpi raja nan murka,	If one dreams that the king is angry,
Alamat tidak mëndapat suka,	It is a sign the person will not be happy,
Sa-barang kërja hëndak-lah jaga,	In whatever he does he should be on his guard,
Supaya jangan dapat chëlaka.	In order that no calamity may befall.

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Jika bërmimpi diri-nya bërlawan,	If one dreams he is engaged in a contest,
Dëngan raja tidak këtahuan,	With an unknown king,
Alamat mënang dari sëtëruan,	It is a sign he will triumph over an enemy,
Hati-nya këras tiada tërlawan.	He will be extraordinarily determined.

---

Jika bërmimpi di-përhamba orang,	If one dreams he is the slave of another,
Alamat hina bukan sa-barang,	It is a sign foreboding uncommon degradation;
Akal pikiran tiada-lah tërang,	The intelligence and thoughts of the person will be confused,
Atau kërugian harta dan barang.	Or he will lose his wealth and property.

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Jika bërmimpi mënthalak istëri-nya,	If one dreams that he divorces his wife,
Alamat jahat akan padah-nya,	It is a sign foreboding evil,
Duka-chita hëndak di-tanggong-nya,	He will suffer sorrow,

Pikiran masiat datang kapada-nya.	And wicked thoughts come to him.
Ini-lah bab fasal kětiga, Pərihal binatang di-katakan juga, Dēngar-lah tuan adek dan kakak, Supaya jangan waswas sangka.	This is the third chapter, Which will tell something about animals; Listen to it, brothers and sisters, In order that you may not worry.
Banyak pėrkara orang bėr-mimpi, Ada yang baik, ada yang kėji, Mėntafsirkan itu hėndak-lah erti, Supaya jangan bėrsusah hati.	People dream of many things, Some have a good, others a bad meaning, And you should understand the interpretation, That you may not suffer grief.
Jika bėrmimpi kambing nan banyak, Alamat sėmpurna barang kė-hėndak, Bėrsuka ria anak bėranak, Hamba dan sahaya sėmua tunak.	If a man dreams of a number of goats, It is a sign that all wishes will be realized; He will enjoy himself with children and grandchildren, And slaves and servants will be attached to him.
Jika bėrmimpi daging kambing di-makan-nya, Alamat baik akan paėdah-nya, Harta halal di-pėroleh-nya, Dėmikian-lah tuan di-dalam ta'bir-nya.	If one dreams he partakes of goat's-flesh, It is an auspicious omen; He will acquire legitimate wealth; Thus, sir, is it found in the interpretation.
Jika bėrmimpi aurat kambing jantan, Atau pėrėmpuan aurat kėli-hatan, Alamat baik pada pėndapatan, Tiada-lah janji dapat kėsakitan.	If one dreams of the penis of a he-goat, Or that he sees the vulva of a she-goat, It has been found to be a good sign, And one will not fall ill.
Jika bėrmimpi kuda dan lėmbu, Sėrta di-naikkan ka-bėlakang itu,	If one dreams of a horse or an ox, And that he mounts on its back,

Alamat kĕbajikan padah-nya itu, Harta yang halal datang ka-situ.	It is a sign he will be fortunate,  And that legitimate wealth will come to him.
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Jika bĕrmimpi diri-nya bĕrkuda,  Alamat bĕrummat, harta dan bĕnda, Apa kĕhĕndak sĕmua-nya yang ada, Kĕsusahan tidak dapat mĕng- goda.	If one dreams he is on horse- back, It is a sign he will have servants and property; Whatever he wishes will be there, And he will not be harried by sorrow.
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Jika bĕrmimpi diri-nya bĕr- gajah, Alamat orang mĕndapat tuah,  Sa-barang kĕrja mĕndapat mudah, Apa kata-nya orang ikut-lah.	If one dreams he rides on an elephant, It is a sign he will be favoured by luck; Whatever he does will be easy for him, And people will follow his words.
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Jika bĕrmimpi gajah di-bunoh- nya, Alamat takut orang kapada-nya, Tiada siapa dapat mĕlawan-nya,  Lagi pun harta banyak di-dapat- nya.	If one dreams he kills an ele- phant, It is a sign people will fear him; Nobody will dare to contend against him, And he will obtain large wealth.
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Jika bĕrmimpi naik dĕngan pĕrhiasan Ka-atas gajah pada pĕrasaan,  Jikalau raja, naik takhta kĕra- jaan, Jikalau orang banyak, dapat kĕmuliaan.	If one dreams that fully adorned He mounts an elephant, as he thinks, If he is a prince, he will ascend the throne of a kingdom; If a commoner he will attain honour.
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Jika bĕrmimpi mĕlihat gajah bĕrjuang, Alamat bĕrkĕlahi dĕngan-nya orang, Sama bĕrani, sama mĕmberang,  Sampai binasa salah sa-orang.	If one dreams he sees elephants fighting, It is a sign he will fight with another man; Both being of the same courage and feeling the same wrath, (They will fight) until the one or the other is destroyed.
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Jika bĕrmimpi di-tangkap hari- mau,	If one dreams he is seized by a tiger,
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Alamat kējahatan datang ka- pada-mu, Hëndak-lah sĕgĕra mandi bĕr- limau, Kĕbinasaan itu jangan bĕrtĕmu.	It is a sign that evil will befall;  One should at once take a ceremonial bath, In order not to meet with calamity.
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Mimpi itu jahat-nya sunggoĥ,  Alamat ada orang hĕndak mĕmbunoh, Jika sakit tiada akan sĕmboh,  Sa-barang kĕrja mĕmbĕri gadoh.	This dream is really a very evil omen, Meaning that people want to kill you; If you fall ill, you will not recover, And all work will lead to dis- putes.
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Jika bĕrmimpi harimau masok ka-nĕgĕri, Alamat sĕtĕru datang ka-mari, Fitnah bĕsar tiada bĕrpĕri,  Atau bĕrgadoh sama sĕndiri.	If one dreams a tiger enters the country, It is a sign an enemy is coming; There will be slander beyond description, Or there will be disturbances amongst the people them- selves.
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Bĕrchĕlaka mimpi-nya itu, Pĕnyakit pun banyak datang ka-situ, Orang nĕgĕri tiada-lah tĕntu,  Di-haru olĕĥ shaitan dan hantu.	It is an ill-omened dream; Much sickness will prevail there,  And the people of the country will be disturbed, Plagued by the devil and evil spirits.
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Hĕndak-lah sĕgĕra bĕrtolak bala, Mĕmohonkan ampun kapada Allah taala, Supaya tĕrtolak sĕkalian bala,  Jangan sampai rosak dan chĕla.	Propitiatory offerings should be made at once, And the forgiveness of God Most High asked, In order that all peril may be removed, And calamity and blame be averted.
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Hĕndak-lah kamu mĕmbĕri sĕ- dĕkah, Sĕrta bĕrtaubat kapada Allah, Minta ampun orang yang salah,	You should give alms,  And repent and return to God, And the sinner should ask His forgiveness,
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Di-dalam ta'bir dēmikian itu-lah.	Thus it is said in the interpretation.
Jika bērmimpi rimau dapat di-bunuh-nya,	If one dreams he succeeds in killing a tiger,
Alamat bērbantah akan padah-nya,	It is a sign foreboding a dispute,
Tētapi mēnang daripada sētēru-nya,	But he will triumph over his enemy,
Banyak-lah orang takut kapada-nya.	And many people will fear him.
Jika bērmimpi daging harimau dapat di-makan-nya,	If one dreams he partakes of tiger's flesh,
Alamat harta haram di-pēroleh-nya,	It is a sign he will obtain unlawful wealth,
Suatu tidak apa guna-nya,	Which will not be of the least advantage to him,
Jangan-lah hampir kapada dia-nya.	And he should not even come near it.
Jika bērmimpi mēmbunuh-nya babi,	If one dreams he kills a pig,
Atau tikus dēmikian lagi,	Or a rat,
Alamat orang bēroleh haji,	It is a sign he will succeed in making the pilgrimage,
Nama-nya baik tiada kēji.	And his reputation will remain good and without blame.
Jika bērmimpi bērmain tikus,	If one dreams he plays with a rat,
Alamat bēroleh istēri bagus,	It is a sign he will have a beautiful wife,
Tētapi di-dalam-nya tiada-lah harus,	But inwardly she will not be as she ought to be,
Upama tali sēgēra-lah putus.	The bond will be like a string that is easily broken.
Jika bērmimpi mēnjabat-nya anjing,	If one dreams he touches a dog,
Alamat baik tiada-lah ronsing,	It is a good sign, as he will never be discontented;
Jika bēristēri tiada-lah bērpaling,	If he is married, they will not turn away from each other,
Musoh pun tiada bērani damp-ing.	And enemies will not dare to come close.
Jika bērmimpi kucing datang ka-rumah-nya,	If one dreams a cat comes to his house,

Alamat banyak juga padah-nya, Ada-lah orang datang ka-rumah-nya, Entah-kan sahabat atau kě-luarga-nya.	It is a sign that forebodes many things; There will be a person coming to his house, Perhaps a friend, or a member of the family.
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Jika bėrmimpi kuching kě-banyakan, Alamat ia bėroleh kėbajikan, Tiada-lah susah pakai dan makan, Orang pun banyak malu dan sėgan.	If one dreams of a large number of cats, It is a sign he will acquire merit, He will have no trouble in finding food and clothing, And many people will be shy (of him) and slow to move (against him).
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Jika bėrmimpi pėlandok nan jinak, Atau daging di-makan enak, Alamat hėndak mėndapat anak, Atau harta tėrlalu banyak.	If one dreams of a tame mouse-deer, Or that he partakes of delicious meat, It is a sign he will have a child, Or wealth in great quantity.
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Jika bėrmimpi naik atas unta, Alamat baik tiada-lah lėta, Bėroleh istėri bagai di-chita, Tiada-lah payah mėnchari harta.	If one dreams he mounts a camel, It is good sign and not a bad one; He will have a wife according to his wishes, And will not find it difficult to acquire wealth.
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Jika bėrmimpi makan daging kuda, Alamat baik, ayohai anakda, Umur-nya lanjut ta'bir bėrsabda, Banyak bėroleh harta dan banda.	If one dreams he partakes of horse-flesh. It is a good sign, oh child, His life will be long, says the interpretation, And he will acquire large wealth and property.
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Jika bėrmimpi banyak kuda puteh, Alamat kėbajikan hėndak bėroleh, Dunia akhirat dia nan boleh,	If one dreams of many white horses, It is a sign he will acquire merit; In this and the next word he will be able,
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Mëndapat pangkat martabat      To obtain high rank and office.  
yang lëbeh.

Jika bërmimpi kuda sa-barang      If one dreams of horses of any  
warna,      colour,  
Alamat banyak mëndapat sëm-      It is a sign he will be lucky;  
purna,  
Tidak-lah janji boleh tërkëna,      He is not destined to be  
deceived,  
Lëpas daripada nama yang hina.      And will be spared disgrace.

Jika bërmimpi kuda bërbaju      If one dreams of a horse wearing  
bësi,      a coat of mail,  
Alamat tidak mëndapat asi,      It is a sign he will not meet  
with disobedience;  
Lëpas daripada nama yang      He will be spared a bad reputa-  
këchi,      tion,  
Sëtëru dan musoh tiada bërani.      And opponents and enemies will  
have no courage (to attack  
him).

Jika bërmimpi mëngëjar bina-      If one dreams he chases an  
tang,      animal,  
Alamat banyak akan-nya da-      It is a sign many things will  
tang,      happen to him,  
Sa-barang kërja sëmua-nya      All his work will be done with  
lapang,      an easy mind,  
Sërta pula umor-nya panjang.      And his life will be long.

Jika bërmimpi binatang bërhimpun,      If one dreams that animals  
gather,  
Datang kapada-nya bërdyun-      And come to him in crowds,  
duyun,  
Alamat sëjuk umpama ëmbun,      It is a sign refreshing like dew;  
Bëroleh harta bërtimbun-      He will obtain heaps of wealth.  
timbun.

Jika bërmimpi diri-nya bërkata-      If one dreams he converses,  
kata,  
Dëngan binatang yang ada      With animals which are round  
sërta,      him,  
Alamat hëndak bërsuka-chita,      It is a sign he will enjoy him-  
self,  
Tiada - lah payah mënchari      And have no difficulty in acquir-  
harta.      ing wealth.

Jika bërmimpi dëmikian përi,      If one dreams as follows,  
Mënunggang kambing atau      That he rides on a goat or a  
biri-biri,      sheep,



Alamat mudah pada mēnchari,	It is a sign he will earn easily
Akan nafkah anak istēri.	his daily bread,
	And the keep of his wife and
	children.

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Jika bērmimpi diri-nya mē-	If one dreams he slaughters
motong	
Kambing biri - biri di - dalam	Sheep in the village,
kampung,	
Alamat hēndak mēndapat un-	It is a sign he will be lucky,
tong,	
Bēroleh harta tidak tērhitong.	And acquire innumerable riches.

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Jika bērmimpi dēmikian pula,	Again if one dreams,
Kērbau lēmbu punya kēpala,	Of the heads of buffaloes or
	oxen,
Alamat hēndak mēndapat pa-	It is a sign he will be prosperous,
hala,	
Bēroleh kēkayaan tidak bēr-	And acquire wealth without
chēla.	blame.

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Jika bērmimpi kijang pēlandok,	If one dreams of barking deer,
Alamat bēristēri pērēmpuan	It is a sign he will marry a
elok,	beautiful wife,
Tētapi rēsēmi kurang-lah elok,	But her disposition will be less
	beautiful,
Karna payah hēndak di-pujok.	As it will be difficult to coax her.

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Jika bērmimpi makan daging-	If one dreams he partakes of
nya,	its flesh,
Alamat banyak akan padah-nya,	It is a sign foreboding many
	things;
Mēnchari rēzēki dēngan mudah-	He will earn his daily bread
nya,	easily,
Barang yang halal di-pēroleh-	And acquire legitimate property.
nya.	

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Jika bērmimpi kuda di-pēr-	If one dreams he amuses himself
mainkan,	on horseback,
Ia-itu kapada tēmpat yang	In a place which does not exist,
bukan,	
Alamat tidak dapat kēbajikan,	It is a sign he will not acquire
	merit,
Di-murka Allah ta'bir mēngata-	And God is angry with him,
kan.	says the interpretation.

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Jika bērmimpi sangat di-kaseh-	If one dreams he loves very
nya,	much,

Akan sa-ekor kuda di-përbëla-nya,	A horse which he keeps,
Di-taroh pula di-dalam rumah-nya,	And even takes it into his house.
Alamat tiada baik padah-nya.	It is a sign that forebodes no good.

---

Jika bërmimpi dëmikian itu,	If one dreams like that,
Khianat orang datang ka-situ,	He will suffer from other people's treachery;
Hëndak-lah ingat sa-tiap waktu,	He should be on his guard every moment,
Kapada Allah mohonkan bantu.	And ask God for assistance.

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Jika bërmimpi binatang di-kaseh-nya,	If one dreams that he loves animals,
Di-kumpul di-taroh di-dalam rumah-nya,	Gathers them and takes them into his house,
Alamat sëtëru bënchi kapada-nya,	It is a sign an enemy hates him,
Tëtapi tidak mêngapa pada-nya.	But it will be of no consequence to him.

---

Jika bërmimpi dëmikian përi,	If one dreams as follows,
Binatang gëmok masuk ka-nëgëri,	That a fat animal comes into the country,
Alamat mudah bëroleh rëzëki,	It is a sign that it will be easy to earn one's livelihood,
Allah taala kurnia bëri.	And that God Most High will bestow his favour.

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Jika bërmimpi binatang kurus,	If one dreams of a lean animal,
Alamat itu tiada-lah bagus,	It is not a good sign;
Makanan payah, binatang mam-pus,	Food will be difficult to obtain, animals will die,
Orang pun banyak lapar dan haus.	And many people will suffer from hunger and thirst.

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Jika bërmimpi dëmikian olah,	If one dreams like that,
Alamat nëgëri këdatangan susah,	It is a sign the country will be afflicted with trouble;
Hëndak mënchari tërllu payah,	It will be very difficult to earn one's livelihood,
Karna dia di-murkakan Allah.	As the wrath of God is over them.

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Ini-lah fasal bab kaëmpat,	This is the fourth chapter,
Hamba suratkan mana yang dapat,	In which I have written down whatever I could find;

Entah-kan jarang, ĕntah-kan  
rapat,  
Di-dalam ta'bir hamba mĕn-  
dapat.

Separated by long intervals or  
close together,  
I found it in the interpretation.

Dari hal rumah sĕrta-nya bukit,  
Ka-pohon buahan pula mĕn-  
jangkit,  
Ada tĕrsĕbut sĕrba sadikit,

It treats of houses and hills,  
And extends to trees and fruits,

Ta'bir-nya ada sĕnang dan  
sakit.

Of all of these a little is men-  
tioned;  
Of the interpretations some  
give comfort and others pain.

Jika bĕrmimpi rumah - nya  
runtoĥ,  
Atau rumah lain di-lihat-nya  
sunggoh,  
Alamat itu tĕrlalu odoh,  
Sa-barang kĕrja mĕmbĕri gadoh.

If one dreams his house falls  
down,  
Or that he sees another house  
falling down,  
It is a very bad sign;  
All work will lead to alterca-  
tion.

Barang siapa mimpi yang dĕmi-  
kian,  
Padah itu datang kĕrugian,

Whoever dreams like this,  
It forebodes that he will suffer  
loss,  
Or bereavement by death,  
And many people will not pity  
him.

Atau mĕnanggong kĕmatian,  
Orang pun banyak tiada  
kasehan.

Jika bĕrmimpi runtoĥ tangga-  
nya,  
Atau pataĥ pada pĕnglihatan-  
nya,  
Alamat jahat juga padah-nya,  
Orang pun banyak bĕnchi ka-  
pada-nya.

If one dreams that his house-  
ladder falls down,  
Or breaks before his eyes,  
It is a sign foreboding evil for  
him,  
And many people will hate him.

Jika bĕrmimpi rumah-nya  
tinggi,  
Atau tangga-nya dĕmikian lagi,  
Alamat dia-nya bĕroleh baha-  
gia,  
Mĕndapat laba tiada-lah rugi.

If one dreams that his house is  
very high,  
Or that such is the case with  
his ladder,  
It is a sign that he will be  
fortunate,  
And that he will have great  
profits and no loss.

Jika bĕrmimpi bukit dan kayu,  
Di-pandang-nya tinggi amat  
tĕrlalu,

If one dreams of hills and trees,  
Rising exceedingly high accord-  
ing to his view,

Alamat sěntosa padah-nya itu,      It is a sign which forebodes  
 Tiada-lah mēnanggong aib dan      peace,  
 malu.      And that he will not suffer dis-  
    grace and shame.

Jika bėrmimpi pula dēmikian,      And again if one dreams as  
    follows,  
 Naik bukit pada pėrasaan,      That he thinks that he ascends  
    a hill,  
 Alamat hėndak dapat kėkayaan,      It is a sign that he will acquire  
    wealth,  
 Atau mēnjadi pėnghulu kėmu-      Or that he will attain to the  
 liaan.      rank of an honoured chief.

Jika bėrmimpi kėluar di-dalam      It one dreams he issues from  
    hutan,      the jungle,  
 Alamat baik pada pėndapatan,      It is a good sign according to  
    experience;  
 Lėpas daripada sėgala kėja-      He will be spared all evil,  
    hatan,  
 Tidak-lah mēnanggong kėsa-      And will not suffer pain.  
    kitan.

Jika bėrmimpi kapada pėrasaan      If one dreams that he sees  
 Kayu dan bukit kėruntohan,      Hills and trees falling down,  
 Alamat turun daripada kėka-      It is a sign that he will come  
    yaan,      down from his wealth,  
 Tidak sėmpurna sėgala pėkėr-      And not be fortunate in what-  
 jaan.      ever he does.

Jika bėrmimpi naik ka-rumah      If one dreams he goes up to a  
    bėsar,      big house,  
 Alamat tidak mēnanggong      It is a sign he will not meet  
    sukar,      with difficulties;  
 Pėrkataan kita sėmua mēn-      All people will listen to what  
    dėngar,      we say,  
 Hati-nya sėnang tiada-lah gusar.      And his heart be at ease and  
    not angry.

Jika bėrmimpi baru pėriok-nya,      If one dreams his cooking-pot  
    is new,  
 Atau kapada rumah dapur-nya,      Or dreams of his kitchen,  
 Alamat mēndapat makanan      It is a sign foreboding that he  
    padah-nya,      will find food,  
 Barang yang halal di-pėroleh-      And acquire legitimate property.  
 nya.

Jika bėrmimpi mėlihat-nya      It one dreams that he sees an  
    padang,      open plain,

Atau pohon kayu yang rëndang, Alamat hëndak bēroleh-nya sēnang, Hati-nya suka pikiran lapang.	Or a shady tree, It is a sign he will find peace of mind; His heart will rejoice, and his thoughts will be free of sorrow.
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Jika bērmimpi pohon khorma, Atau zabib atau dēlima, Alamat baik jika bērhuma,  Padah-nya lēkas boleh tērima.	If one dreams of a date-tree, Of a fig or a pomegranate, It is a good sign in case he has planted hill-paddy, As it forebodes a speedy harvest.
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Jika bērmimpi dēlima bērbuah, Di-lihat masak mērēkah- mērē- kah, Alamat itu hëndak bērtuah,  Harta banyak tiada-lah susah.	If one dreams of a pomegranate bearing fruit, Which he sees ripe and bursting open, It is a sign he will be favoured by luck, And acquire much wealth with- out difficulties.
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Jika bērmimpi bērtanam-nya tēbu, Atau buah-buahan yang bēr- madu, Alamat Tuhan mēmbēri bantu,  Orang pun kaseh tiada-lah jēmu.	If one dreams that he plants sugar-cane, Or fruits which are very sweet,  It is a sign the Lord will help him, And people will never weary in their love for him.
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Jika bērmimpi pohon gandum- nya, Di-lihat-nya hijau sēgala daun- nya, Alamat mahal bēras dan padi- nya, Tiada mēnjadi sa-barang kērja- nya.	If one dreams of wheat,  Which he sees with all leaves green, It is a sign paddy and rice will be dear, And he will not be successful in anything he does.
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Jika bērmimpi daun-nya luroh,  Alamat bahagia bēsar-nya sung- goh, Tiada - lah susah, tiada - lah gadoh,	If one dreams leaves are falling down, It is a sign he will really be very blessed, He will have no sorrow and no quarrels,
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Banyak-lah orang boleh di- And will have many people at  
suroh. his command.

Jika bėrmimpi diri-nya kė- If one dreams that he falls  
guguran, down,  
Dari bukit atau di-kayuan, From a hill or from a tree,  
Alamat hėndak dapat pėrchin- It is a sign he will experience  
taan, grief,  
Karna bėrchėrai dėngan kė- As he will be separated from  
kasehan. his beloved.

Jika bėrmimpi masjid nan If one dreams that a mosque  
ruboh, falls in,  
Alamat nėgėri kėdatangan It is a sign there will be distur-  
gadoh, bances in the country;  
Tiada kėtahuan barang yang Nobody will know how he  
di-turut, should act,  
Ka-sana ka-mari tėrlalu rusoh. There will be tumult every-  
where.

Jika bėrmimpi dėmikian pė- If one dreams like that,  
kėrti,  
Banyak-lah orang bėrsusah Many people will suffer grief;  
hati,  
Raja nėgėri alamat hėndak It is a sign that the king of the  
mati, country will die,  
Atau ugama tidak sapėrti. Or that religion is not as it  
ought to be.

Here ends the interpretation of dreams, and the Malay author ends his work with the usual statement that he is very poor, lonesome, unhappy and ignorant, followed by the customary *captatio benevolentiae*.

Of the *Ta'bir Mimpi* mentioned by J. J. de Hollander I have been unable to procure a copy or to find if the work has ever been published. According to de Hollander it is divided into three parts and an appendix. The first part contains interpretations of dreams and is divided (after the week) into seven chapters, each chapter having thirty-three sub-divisions in accord with the number of the letters of the Malay alphabet<sup>1</sup>. The meaning of a dream depends on the day on which one has dreamt it, and on the first letter of the name of the thing dreamt of. The second part contains the omens to be drawn from eclipses of the sun and the moon and is divided into eight chapters in accordance with the *windu*, or Javanese

<sup>1</sup>The order of the letters, however, is not that of the Malay alphabet; the letter *pa* پ is missing, and *lam-alif* ل is added.

cycle of eight years, each chapter having twelve sub-divisions in accord with the twelve months of the year. The omen to be drawn from an eclipse depends on the year and the month in which it takes place. The third part contains the omens to be drawn from earthquakes. The appendix is divided into three chapters. The first chapter states what kind of dreams one must not try to interpret, and in twenty paragraphs interprets twenty kinds of dreams. The second chapter explains the meaning of involuntary movements, (*gêrak*) of the different parts of the human body. The third chapter treats of lucky and unlucky colours and marks for cats.

A few passages from this work are given by de Hollander, and for comparison with the *Shaër* a translation of them is given.

#### FROM THE FIRST PART.

Bahawa ini-lah fasal yang ka-ëmpat pada mënnyatakan mimpi di-dalam malam sëlasa. Maka ada-lah jika mimpi daripada malam sëlasa, dan awal huruf-nya yang di-mimpi itu alif, maka ada-lah akan alamat-nya itu akan bëroleh këmënan-gan dunia akhirat pada-nya.

Dan lagi jika bër mimpi daripada malam sëlasa dan awal huruf-nya itu *ba*, maka ada-lah akan alamat-nya akan mën-dapat sukar dan payah dari-pada-nya.

This is the fourth chapter explaining dreams in the night from Monday to Tuesday. If one dreams on that night, and the first letter (of the thing dreamt of) is *Alif*, it is a sign that one will be successful in this and the next world.

If one dreams in the night from Monday to Tuesday and the first letter of (the thing dreamt of) is *ba*, it is a sign that one will experience troubles and hard times.

If the first letter is *ta*, it is a sign that he will be put to shame <sup>1</sup>.

If the first letter is *tha*, he will have large profits and live in peace and happiness.

If the first letter is *jim*, he will experience sorrow.

If the first letter is *ha*, he will find lawful and ample daily bread and peace in this and the next world.

If the first letter is *kha*, he will find his daily bread easily and without trouble.

If the first letter is *dal*, he will live in joy and peace.

If the first letter is *dzal*, he will experience trouble.

If the first letter is *ra*, he will experience trouble,

If the first letter is *sin*, he will be put to shame.

If the first letter is *za*, he will find the mercy of God, peace and joy.

<sup>1</sup> The wording of all following sentences in the Malay text being identical with the preceding sentence with the exception of the letter and the meaning, only an abridged translation is given here.

If the first letter is *shin*, he will find ample and lawful daily bread without difficulties.

If the first letter is *sad*, he will meet with trouble.

If the first letter is *dlad*, he will meet with joy.

If the first letter is *ta*, he will experience feelings of sorrow.

If the first letter is *tla*, he will find the mercy of God, joy and peace in this and the next world.

If the first letter is *ain*, he will meet with difficulties.

If the first letter is *ghain*, he will find his lawful daily bread in an easy way.

If the first letter is *ja*, he will meet with difficulties.

If the first letter is *kaf*, ك he will obtain the mercy of God and peace.

If the first letter is *kaf*, he will find lawful daily bread.

If the first letter is *lam*, he will meet with trouble and difficulties.

If the first is *mim*, he will be successful in this and the next world.

If the first letter is *nun*, he will find the mercy of God, joy and peace in this and the next world.

If the first letter is *wau*, he will find ample and lawful daily bread in an easy way.

If the first letter is *ha*, he will attain greatness and honour in this world until the life to come.

If the first letter is *ya*, he will obtain the mercy of God and peace.

If the first letter is *lam-alif*, trouble will come to him.

If the first letter is *cha*, he will attain honour and greatness and wealth, and peace.

If the first letter is *nga*, he will find ample daily bread, but suffer from many an illness.

If the first letter is *ga*, he will meet with trouble and suffer loss.

If the first letter is *nya*, he will experience difficulties which will last for long.

#### FROM THE SECOND PART.

Běrmula, ini-lah fasal yang ka-ěnam pada měnyatakan ta'bir gěrhana daripada tahun *ba* dan bulan Muharam, maka ada-lah alamat-nya itu akan karasa susah banyak dan dukachita banyak dan fitnah kěras dan pěnyakit pun kěras ada-nya dalam tahun itu.

This is the sixth chapter interpreting eclipses. (An eclipse) in the year *Ba*<sup>1</sup> and in the month Muharam is a sign that there will be much trouble, much sorrow, severe slander and severe sickness during that year.

<sup>1</sup> The names of the eight years of the Windu are Alif, Ebe, fımawal, fe, Dal, Be, (= Ba) Wawu and fımakhir.



Dan lagi jika gērhana dalam tahun *ba* dan bulan Safar, maka ada-lah alamat-nya itu fitnah banyak dan pēnchuri banyak dan banyak pēnyakit dan sakalian binatang yang buas ada-nya dalam tahun itu.

If an eclipse occurs in the year *ba* and the month Safar, it is a sign that there will be much slander and many thefts and much illness and all kinds of ferocious animals during that year <sup>2</sup>.

An eclipse in the month *Rabi-ul-awal* of the year *ba* is a sign that there will be slander and all kinds of ferocious animals during that year.

An eclipse in the month of *Rabi-ul-akhir* of the year *ba* portends severe illness and slander, and the devil, too, will be strong during that year.

An eclipse in the month of *Jumadi-'l-awal* of the year *ba* portends slander and many ferocious animals during that year.

An eclipse in the month *Jumadi-'l-akhir* of the year *ba* is a sign that daily bread will go to the enemy (*rēzēki akan musoh*) and that illness will be strong during that year.

An eclipse in the month of *Rējab* of the year *ba* portends severe sickness and slander and the devil will be strong during that year.

An eclipse in the month *Shaaban* of the year *ba* portends dear food, severe sickness and the devil will be ready during that year.

An eclipse in the month *Ramadhan* of the year *ba* portends sorrow lasting a long time.

An eclipse in the month *Shawal* of the year *ba* is a sign that every king and prince will experience trouble during that year.

An eclipse in the month *Dzulkaidah* of the year *ba* is a sign that every country will experience sorrow in that year.

An eclipse in the month *Dzulhijah* of the year *ba* is a sign that there will be slander, that the enemy will be victorious and that there will be severe illness and many lawsuits during that year.

#### FROM THE APPENDIX.

Fasal pada mēnyatakan gērak yang di-dalam diri kita, maka hēndak-lah di-kētahui karna yang dēmikian ada kala-nya baik dan ada kala-nya jahat.

This chapter is to explain the meanings of (involuntary) movements in (the body of) ourselves, which one should know, as they are sometimes good and sometimes bad (signs).

<sup>2</sup> The wording of the following sentences of the Malay text being identical with the proceeding sentences with the exception of the name of the month and the meaning, only an abridged translation is given below.

Pertama bĕrgĕrak kĕpala-nya sĕmua-nya alamat bĕroleh harta dan barang yang chita itu baik pada-nya.

Dan jika bĕrgĕrak kĕpala yang kanan alamat bĕroleh harta pada-nya.

Dan jika bĕrgĕrak kĕpala yang kiri alamat akan sakit pada-nya.

Firstly, if the whole head stirs, the person will acquire wealth and property as desired.

If the right (side of the) head stirs, the person will acquire wealth.

If the left (side of the) head stirs, the person will fall ill.

If the right brow stirs, the person will be fortunate; if the left brow, he will experience joy. If the right upper eye-lid twitches, the person will obtain wealth; if the left, he will meet another person returning from a voyage or a person coming from a distant place. If the right lower eye-lid twitches, the person will experience sorrow; if the left, he will fall ill or will make a voyage or journey to a distant place. If the (inner) corner of the right eye (*pĕnjuru mata-nya kanan*) twitches, the person will fall ill; if that of the left eye, he will be loved by other people. If the outward corner of the right eye (*ekor mata-nya kanan*) twitches, the person will be visited by one living far away; if that of the left eye, he will experience joy and meet his beloved. If the right eye-ball throbs, the person will hear of the coming of a national foe or of a private enemy; if the right nostril twitches, the person will be spared illness and misfortune; if the left, a blessing is coming. If the whole nose twitches, the person will smell perfumes. If the right ear twitches, the person will hear of the coming of a national foe or of a private enemy; if the left, the enemy will be victorious. If the right cheek twitches, the person will enjoy a long life; if the left, he will be free from illness. If the upper lip twitches, the person is loved by his kinsfolk; if the lower, he will have disputes with other people. If the right (side of the) upper lip twitches, the person will experience joy; if both lips, he will eat something delicious. If the tongue twitches downward (*bĕrgĕrak lidah-nya ka-bawah*) it is a sign of a coming loud and angry discussion (*bĕrkata haruhara*). If the right (side of the) chin twitches, the person will meet influential people; if the left, he will experience joy. If the whole chin twitches, the person will find good work. If the inside of the mouth twitches (*bĕrgĕrak di-dalam mulut-nya*) the person will hear alarming news. If the right (side of the) neck twitches, the person will recover from every illness; if the left side, it is a sign of (coming) joy; if the whole neck, it is a sign of coming good deeds. If the right shoulder twitches, the person will acquire wealth justly; of the left shoulder, the person will acquire knowledge.....<sup>1</sup>.

<sup>1</sup> Apparently only part of this chapter has been taken over by de Hollander—Throbbings also play an important part in the mantic science of India. As to Indian literature on this subject see Diels, *Beiträge zur Zuckungs-literatur*, I, II (Abh. d. Berl. Ak. 1907, 1908) II, pag. 113 et seq.

**Malay Poisons and Charm Cures**, by John D. Gimlette, M.R.C.S., L.R.C.P. (3rd edition, London, 1929, price 10s. 6d.).

We are very glad to welcome the third edition of this now well-known work. Its appearance not only shows the interest of a certain section of the public in the subject-matter but has given the author an opportunity to correct minor errors in previous editions and to add a considerable amount of new material, much of it comparative. On p. 4 we notice new parallels from Sir T. Browne and Plutarch; on p. 8 there is a new section on betel-chewing, due partly to Mr. Penzer's paper in the "Ocean of Story" on "The Romance of Betel-chewing"; on p. 34 is a new quotation from a Malay classic; on pp. 49-50 a new and horrible example of roasting a woman after childbirth so that she died; on p. 60 fresh material on bezoar-stones. The technical sections have also been enlarged, and the index expanded.

We have noted two misprints: *bankit* for *bangkit* (p. 29) and "sixth century" for "sixteenth century" (p. 107).

Dr. Gimlette's work provides an example that should be followed by other scientists, whom fate or inclination has brought to Malaya. The field is large and the labourers too few. Toxicology is not by any means the only branch of Malay medicine! To-day the existence of botanists and chemists and zoologists in the Government service and the growing number of Malays able to speak English make the work of a student of the Malay pharmacopoeia far easier than it was in the past. In earlier days specimens had to be sent to Europe for identification and the student had no educated Malays to help him over difficulties on translation.

R. O. W.